MISCELLANEOUS TARIFF AND TRADE BILLS

HEARINGS AND WRITTEN COMMENTS
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS
FIRST AND SECOND SESSIONS

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MISCELLANEOUS TARIFF AND TRADE BILLS

TUESDAY, NOVEMBER 15, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met at 9:40 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press releases announcing the hearing follow:]

[Press release No. 19, Friday, Nov. 4, 1983]

THE HONORABLE SAM M. GIBBONS (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES HEARINGS ON CERTAIN TARIFF AND TRADE BILLS, NOVEMBER 15, 1983

The Honorable Sam M. Gibbons (D-Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold hearings on Tuesday, November 15, 1983, on certain tariff and trade bills to provide permanent duty-free entry, duty reduction, temporary suspension of duty, duty increase, classification changes and other bills. The hearing will begin at 9:30 a.m., in room 1100, of the Longworth House Office Building.

Officials from interested executive branch agencies will be the first witnesses. Testimony also will be received from interested private sector witnesses.

The tariff and trade bills on which testimony will be received are listed below:

DUTY-FREE BILLS

H.R. 2471 (Mrs. Boggs): To provide for the duty-free entry of geophysical or contracting services and articles exported and returned and used for the extraction or development of natural resources.

H.R. 4218 (Mr. Britt): to extend permanent duty-free treatment to Meta-toluic acid (MTA), a chemical used to manufacturer certain insect repellents.

DUTY REDUCTION BILLS

H.R. 2641 (Mr. Frenzel): To provide duty relief for precious stones exported for processing and returned for the sole personal use of the exporter.

H.R. 2776 (Mr. Ratchford, Mrs. Kennelly, et al.): To provide for a duty rate on imported gut, used as surgical sutures, equivalent to the duty rate on surgical sutures of other materials.

H.R. 2851 (Mr. Frank): To provide for a separate duty item with reduced duty for certain knives having snap-off blades and parts thereof.

H.R. 3817 (Mr. Hance and Mr. Frenzel): To provide for a gradual reduction in duty on ethyl and methyl parathion over a five-year period.

H.R. 4255 (Mr. Frenzel): To provide for a reduction in duty on certain fresh asparagus.

DUTY SUSPENSION BILLS

H.R. 2667 (Mr. Thomas of California): To suspend until July 1, 1988, the duty on yttrium bearing ores, materials and compounds containing by weight more than 19 percent but less than 85 percent yttrium oxide equivalent.

H.R. 2947 (Mr. Pease): To suspend the duty on fluorspar until the close of June 30, 1986.

H.R. 3174 (Mr. Matsui): To permanently suspend the duty on certain telescopes and telescopic sights for rifles.

H.R. 3311 (Mr. Vander Jagt): To suspend the duty for a three year period on dicyclomine hydrochloride.

H.R. 3312 (Mr. Vander Jagt): To suspend the duty for a three year period on terfenadine.

H.R. 3313 (Mr. Vander Jagt): To suspend the duty for a three year period on clomiphene citrate.

H.R. 3445 (Mr. Conable): To suspend the duty until June 30, 1987, on diphenyl guanidine and di-ortho-tolyl guanidine.

H.R. 3709 (Mr. Guarini): Extend the temporary suspension of duty on natural graphite until January 1, 1988.

H.R. 3731 (Mr. Vander Jagt): Extend the temporary suspension of duty on certain clock radios until September 30, 1987.

H.R. 3740 (Mr. Albosta): To suspend the duty on mepenzolate bromide for a three year period.

H.R. 3741 (Mr. Albosta): To suspend the duty on desipramine hydrochloride for a three year period.

H.R. 3742 (Mr. Albosta): To suspend the duty on rifampin for a three year period.

H.R. 4035 (Mr. Jacobs): To suspend the duty on a certain antibiotic until December 31, 1986.

H.R. 4223 (Mr. Moore): To suspend for a three year period the duty on 4-0-beta-D-Galactopyranosyl-D-fructose.

H.R. 4224 (Mr. Moore): To suspend for a three year period the duty on nicotine resin complex.

H.R. 4225 (Mr. Moore): To suspend for a three year period the duty on iron dextran complex.

DUTY INCREASE BILLS

H.R. 2711 (Mr. Vander Jagt): To impose a duty of one-tenth of one cent per gallon on apple and pear juice.

CUSTOMS BILLS

H.R. 3158 (Mr. Gibbons): To provide for the implementation of the Customs Convention on Containers, 1972, to provide duty-free treatment for repair parts accessories and equipment of temporarily admitted containers.

H.R. 3159 (Mr. Gibbons): To provide for the assessment of interest on duties which are not paid within 25 days of the date of liquidation and further provide interest to be paid by the Government for duties collected which are required to be subsequently reduced.

H.R. 3299 [1] (Mr. Hughes, et al.): To amend the Controlled Substances Act, the Controlled Substances Import and Export Act, and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses and for other purposes. (This hearing will be directed to Title II of the proposed "Comprehensive Drug Penalty Act of 1983".) (Also referred to Judiciary and Energy and Commerce Committees.)

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[1] ED. NOTE.—H.R. 3299 is superseded by H.R. 4901.

CLASSIFICATION BILLS

H.R. 4232 (Mr. Brooks): To amend the Tariff Schedules of the United States to reclassify certain naphtha products containing a benzenoid chemical.

H.R. 4296 (Mr. MacKay, Mr. Matsui, Mr. Hance, Mr. Thomas of Calif., et al.): To provide for the establishment of a more clear definition of the intended duties on concentrated and not concentrated orange juice by providing a clear delineation of the two.

OTHER BILLS

H.R. 3795 (Mr. Coelho, et al.): To harmonize, reduce, and eliminate barriers to trade in wine on a basis which assures substantially equivalent competitive opportunities for all wine moving in international trade.

H.R. 4316 (Mr. Frenzel): To amend the Tariff Act of 1930 to include substitution under same-condition drawback.

H.R. 3727 (Mr. Downey and Mr. Gradison): To prohibit the President from imposing import quotas on sugar and repeal any import quotas on sugar currently in effect.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Requests to be heard must be made by telephone to Harriett Lawler [telephone (202) 225-3627] by noon, Wednesday, November 9, 1983. The request should be followed by a formal written request addressed to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building Washington, D.C. 20515.

In view of the number of bills to be reviewed and the limited time available, witnesses wishing to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 100 copies of their prepared statements to the full Committe office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to do so may result in the witness being denied the opportunity to testify in person because of the large number of bills involved.

Each statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address, and capacity in which the witness will appear (as well as a telephone number where he or his designated representative may be reached);
2. A list of any clients or persons, or any organization for whom the witness appears; and
3. A topical outline or summary of the comments and recommendations in the full statement.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

Persons submitting a written statement in lieu of a personal appearance should submit six (6) copies of their statement by the close of business Tuesday, November 22, 1983, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statement for the record of the printed hearing wish to have their statement distributed to the press and the interested public, they may provide 75 additional copies during the course of the public hearing.

[Press release No. 20, Monday, Nov. 7, 1983]

THE HONORABLE SAM M. GIBBONS (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES THE ADDITION OF A BILL TO BE CONSIDERED IN HEARINGS ON CERTAIN TARIFF AND TRADE BILLS, PREVIOUSLY ANNOUNCED FOR NOVEMBER 15, 1983

The Honorable Sam M. Gibbons (D-Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that one additional bill will be considered in addition to the previously published list at its hearing on November 15, 1983. The hearing announced in the Subcommittee on Trade press release dated Friday, November 4, 1983, will include certain tariff and trade bills to provide permanent duty-free entry, duty reduction, temporary suspension of duty, duty increase, classification changes and other bills. The hearing will begin at 9:30 a.m. in room 1100 of the Longworth House Office Building.

The additional bill is listed below:

DUTY INCREASE BILL

H.R. 4321 (Mr. Sisisky): To repeal the existing temporary suspension of duty on carob flour.

Although the cutoff date for requests to be heard, as announced in press release #19, is the close of business on November 9, 1983, the Subcommittee will make every effort to accommodate witnesses on testimony applicable to the additional bill. Requests to be heard on this bill should be made as soon as possible by telephone to Harriett Lawler [telephone (202) 225-3627].

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[Press release No. 21, Thursday, Nov. 10, 1983]

THE HONORABLE SAM M. GIBBONS (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES THE ADDITION OF A BILL TO BE CONSIDERED IN HEARINGS ON CERTAIN TARIFF AND TRADE BILLS, PREVIOUSLY ANNOUNCED FOR NOVEMBER 15, 1983

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The additional bill is listed below:

DUTY SUSPENSION BILL

H.R. 4329 (Mr. Philip M. Crane): To extend until July 1, 1987, the existing suspension of duty on 4-chloro-3-methylphenol.

Although the cutoff date for requests to be heard, as announced in press release #19, was noon, November 9, 1983, the Subcommittee will make every effort to accommodate witnesses on testimony applicable to the additional bill. Requests to be heard on this bill should be made as soon as possible by telephone to Harriett Lawler [telephone (202) 225-3627].

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[Press release No. 22, Thursday, November 10, 1983]

THE HON. SAM M. GIBBONS (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES THE ADDITION OF A BILL TO BE CONSIDERED IN HEARINGS ON CERTAIN TARIFF AND TRADE BILLS, PREVIOUSLY ANNOUNCED FOR NOVEMBER 15, 1983

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The additional bill is listed below:

CLASSIFICATION BILL

H.R. 4339 (Mr. Guarini): To amend the Tariff Schedules of the United States regarding the classification of certain articles of wearing apparl.

Although the cutoff date for requests to be heard, as announced in press release No. 19, was noon, November 9, 1983, the Subcommittee will make every effort to accommodate witnesses on testimony applicable to the additional bill. Requests to be heard on this bill should be made as soon as possible by telephone to Harriet Lawler [telephone (202) 225-3627].

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

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Chairman GIBBONS. Good morning, ladies and gentlemen. Let me make a little opening statement and then we will get down to our scheduled business.

Of course, as everyone knows, this is a meeting of the Trade Subcommittee of the Ways and Means Committee. The purpose of this hearing is as announced in our press releases of some time ago. We are going to hear testimony on certain 35 miscellaneous tariff and trade bills under consideration by the subcommittee.

Today we will hear testimony from both the administration and the private sector witnesses. We have invited the International Trade Commission to be represented at the witness table in a supporting role to help with the questions and data.

I will be using procedures similar to those I have used in dealing with these bills in the past. That is, I do not expect to send any bill to the Senate unless there is a Senator cosponsor of a companion bill. This procedure, as evidenced by the positive action taken by the Senate a little earlier this year—in fact, last week—will save us all a great deal of trouble.

As we have a number of bills to get through today I will ask all witnesses to briefly summarize their testimony. Witnesses' complete testimony will be included in the record. In the interest of time, if the administration wishes, they may identify those bills to which they have no objection and limit their comments to those bills which require some elaboration or to those which they oppose. I hope that this is satisfactory with the administration.

With a few exceptions, we will proceed through the bills in the order of our press release of November 4, 1983. The agenda before you lists those bills in the order in which witnesses will appear. If the administration witnesses are ready and the ITC representative is ready, we will proceed.

The first bill we would take up is H.R. 2471 by Mrs. Boggs and you may proceed.

STATEMENT OF BRUCE JON MILLER, DIRECTOR, CONSUMER GOODS AND AUTOMOTIVE INDUSTRIES DIVISION, INTERNATIONAL TRADE ADMINISTRATION, ACCOMPANIED BY BARBARA A. STEINBOCK, U.S. DEPARTMENT OF COMMERCE; LEO WEBB, ATTORNEY, OFFICE OF TARIFF AFFAIRS, U.S. INTERNATIONAL TRADE COMMISSION; ARTHUR I. RETTINGER, GENERAL ATTORNEY, OFFICE OF THE CHIEF COUNSEL, U.S. CUSTOMS SERVICE; C. MICHAEL HATHAWAY, DEPUTY GENERAL COUNSEL, U.S. TRADE REPRESENTATIVE; JOHN NUTTALL, ACTING CHIEF, SUGAR GROUP, AND EDWARD MISSIAEN, DEPUTY DIRECTOR FOR ANALYSIS, HORTICULTURE AND TROPICAL PRODUCTS DIVISION, FOREIGN AGRICULTURAL SERVICE, DEPARTMENT OF AGRICULTURE

Mr. **Miller**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Would you identify yourself for the record so that we will have you in there by name?

Mr. **Miller**. I am Bruce Miller, the Director of the Consumer Goods and Automotive Industries Division, International Trade Administration, Department of Commerce. I am accompanied by Barbara A. Steinbock of the Department of Commerce.

Also here on the panel is Leo Webb, Attorney, Office of Tariff Affairs, U.S. International Trade Commission. On my right, from the U.S. Customs Service is Arthur Rettinger, General Attorney of the Office of the Chief Counsel. We will be joined also by Mike Hathaway, Deputy General Counsel, U.S. Trade Representative, and from the U.S. Department of Agriculture, John Nuttall, Acting Chief, Sugar Group, and Ed Missiaen, Deputy Director for Analysis, Horticulture, and Tropical Products Division, Foreign Agricultural Service.

Mr. **Miller**. Mr. Chairman, we are pleased to have the opportunity to present our views on these miscellaneous tariff bills and we will proceed as you suggested and limit our remarks only to those bills where we have opposition.

Chairman **Gibbons**. All right.

Mr. **Miller**. I would like to make one general comment regarding the effective date of all of the bills, and that is that we request that the effective date on all bills that are not continuations of present duty changes be no sooner than 15 days from the date of enactment.

Chairman **Gibbons**. That sounds reasonable and we will make that a rule unless someone seeks an exception and can justify it. Go right ahead.

Mr. **Miller**. Thank you, Mr. Chairman.

With regard to H.R. 2471, the administration has no objection to the bill. We are suggesting, and will provide the staff with, some technical changes that we feel are appropriate for that bill.

Chairman **Gibbons**. All right. Since Mr. Frenzel is here, do you want to talk about his bill a little, H.R. 2641? Excuse me. Do you want to just cover those that you have objections to and skip over the ones to which you have no objection?

Mr. **Miller**. OK, Mr. Chairman. H.R. 4218.

Chairman **Gibbons**. All right, just a minute.

Mr. **Frenzel**. Mr. Chairman, was the testimony on H.R. 2471 in support?

Chairman **Gibbons**. Yes.

Mr. **Frenzel**. Thank you.

Chairman **Gibbons**. All right, fine. To assure that we are all working off the same document; we are in the table of contents of the briefing book and Mr. Miller has just talked about H.R. 2471, which is Mrs. Boggs' bill. There is no objection to that except that they want to make some technical changes. They feel it increases competitiveness.

Mr. **Schulze**. Mr. Chairman, has H.R. 2860 been dropped from consideration at this time?

Chairman **Gibbons**. None of them have been dropped from consideration. We are just going through the list of those which appeared in the press release here. Go right ahead.

Mr. **Miller**. Mr. Chairman, with regard to H.R. 4218, the administration opposes enactment of this legislation. We oppose unilateral tariff reductions when such reductions could affect the competitive posture of U.S. producers.

In this case, enactment of H.R. 4218 could adversely affect the one U.S. company that manufactures MTA, which is the chemical involved here. This U.S. manufacturer produces a form of this chemical in Brooklyn, N.Y. There is some concern that some purchasers will not be able to obtain a pure form of the chemical and we realize that.

We realize that one company does require a pure form which is not available in the United States. However, our feeling is that were we to allow the duty to be reduced that it would apply both to the pure and impure form of the chemical and by doing so we would undercut the competitive position of the U.S. company.

Chairman **Gibbons**. Are there any questions?

Mr. **Frenzel**. Would you object to the bill if it had either of the forms rather than both of them?

Mr. **Miller**. Yes, we would still object.

Mr. **Frenzel**. So it does not make any difference what form it is in?

Mr. Miller. The way the pricing works, they would use the pure form.

Mr. Frenzel. May I ask further if you are normally going to be opposing bills on the basis of a single source U.S. manufacturer's competitive position? Does that manufacturer supply enough for the U.S. market?

Mr. Miller. Congressman, we do have other bills where I noticed we have opposition where there is limited sourcing in the United States. However, we do not always oppose bills on that ground.

Mr. Frenzel. Thank you.

Chairman Gibbons. So that we can proceed as expeditiously as possible, I would invite my colleagues, if you have questions, to just go ahead and ask them without seeking recognition. In that way I think we can move more expeditiously.

Go right ahead.

Mr. Miller. Thank you, Mr. Chairman. H.R. 2641, we oppose enactment of that legislation.

Chairman Gibbons. Do you want to explain why?

Mr. Miller. Again, Mr. Chairman, we are opposing on the grounds that a reduction of the duty as proposed in this legislation could affect the competitive posture of U.S. producers.

In this instance, enactment of H.R. 2641 could adversely affect the domestic jewelry industry by encouraging the use of non-U.S. settings and labor since arrangements to avoid the 3-year restriction on sales appear quite possible.

Mr. Frenzel. Do you mean the flood of U.S. tourists going abroad with stones in their pocket to be reset would shatter the economy of Massachusetts?

Mr. Miller. Well, Mr. Congressman, our belief is that the bill would not be limited to tourists.

Mr. Frenzel. Would you object to it if it were limited to tourists?

Mr. Miller. We have not looked at that possibility. I think that that would change the legislation significantly.

Mr. Frenzel. Mr. Chairman, there are going to be no witnesses for this bill, so I would like to explain briefly why it was written.

Chairman Gibbons. Go right ahead.

Mr. Frenzel. I have a constituent who went abroad carrying a $2,000 stone and called the attention of the Customs Service to it, went abroad, got themselves a fitting for it which was worth $200, and came back to the United States and the friendly, fun-loving neighborhood Customs banged him for the value of the stone and the fitting when he came back to this country, although in my judgment the Commissioner of Customs had the ability to waive the tariff on the stone.

And I assume that this happens a limited number of times, and I think the Customs department's deportment in this case was perhaps retaliatory because the individual in question was obviously violating other laws which should not have been violated. But to think that somebody cannot take something out of this country and have it upgraded and be charged for the full value of it makes me question the whole TSUS law, if that is the way it is going to be interpreted.

And if the bill is drafted incorrectly, I would be pleased to work on the drafting with you. But if you believe we should tax U. S.

buyers of stones who go out of the country to have them set twice, I would like to know about it, and then I will not worry about making any adjustments to my draft.

Chairman Gibbons. Let us hear your response.

Mr. Rettinger. There is no duty on unset diamonds, rubies, sapphires, and emeralds. Consequently, unset precious stones can be imported duty-free. In this particular case the stone was exported from the country, set into a finished piece of jewelry as a finished piece of jewelry. There was a substantial transformation, albeit a minor substantial transformation.

In that degree I think we have to agree with Mr. Frenzel, but under the interpretation of the Court of International Trade and the Customs Court, that is a substantial transformation and when the stone is reimported with the setting that is a single article of commerce and Customs did not believe that it had the authority to break it apart for the importer into its separate pieces.

The entireties doctrine took over. If, in fact, the gentleman had brought the stone back with him after having the setting fashioned abroad and then had the setting sent back or following, then in fact duty would have been on just the setting. The stone would have also come back duty free, as it had come in the first time, duty free. The setting would have had the duty attached to it of settings, which I believe is 10 percent, and that hopefully would have been that.

Alternatively, Mr. Frenzel had a bill about 2 years ago, the same condition drawback, which in this case might have been able to help the individual in the sense that the stone and setting could have been reexported in the same condition, and drawback claimed. In fact, had he returned with the stone separately and the setting to follow, we would have received the same duty treatment had he done that originally.

I am sorry this happened, but I am not sure——

Mr. Frenzel. Well, do you object to having the bill structured so that individuals could take stones out of the country and get them reset and brought back in without getting banged for them?

Mr. Rettinger. I will defer, if I can, to the Commerce Department.

Mr. Miller. Well, as I said, Mr. Chairman, we would have to take a look at that. That really changes the analysis that we have done. We certainly would have a lot less concern about a tourist, something that would occur as a result of a tourist traveling abroad.

The problem with this bill is that it makes a general amendment to the tariff schedules which opens up a lot of possibilities for use of the tariff schedules to avoid what otherwise would be the applicable duties.

Mr. Frenzel. Thank you very much, Mr. Chairman.

Chairman Gibbons. All right. Perhaps we can redraft this bill and make it acceptable to the administration.

Go ahead.

Mr. Miller. Thank you, Mr. Chairman.

With regard to H.R. 2776, the administration has no objection.

With regard to H.R. 2851, the administration opposes enactment.

Chairman Gibbons. Do you want to explain why?

Mr. Miller. Again, we believe this is a unilateral duty reduction that might adversely affect U.S. production. There is at least one U.S. firm assembling these knives using foreign components. The bill would unilaterally reduce tariffs on a product produced in the United States without providing for a new export opportunity for U.S. exporters.

The main foreign supplier of snap blade knives and parts is Japan and unilateral tariff reductions on imports from Japan would, we believe, be counterproductive at this time. The types of permanent tariff reductions proposed in the legislation we believe should be accomplished through international trade negotiations in which we have the opportunity to obtain reciprocal benefits for U.S. exporters.

Mr. Frenzel. Am I correct in understanding that there is $105,000 worth of market that we can exchange for this important concession?

Mr. Miller. Well, I am not sure about the exact figure. I believe the U.S. ITC estimates imports are less than $1 million a year.

Mr. Frenzel. I have an estimate of $105,000 in annual loss of Customs revenue. Would that be approximately correct?

Mr. Webb. Mr. Frenzel, yes. We report $105,000 approximate annual revenue loss. This is based upon an analysis of the residual or basket category, where there is $38 million of imports but we estimate only 5 percent of that would be the snap blade knives.

Mr. Frenzel. Thank you very much.

Now is this one of those cases where the blades come in at a different duty than the assembled knife and so what we are protecting is one assembler in the United States and what is the usual outcome is that the person who buys from that assembler will begin to buy the blades themselves and assemble them themselves, thus avoiding the duty or the local assembler's fee?

Mr. Miller. Well, I agree with you about the facts that in this case we have an assembler, that the tariff treatment is such that the components——

Mr. Frenzel. Let me phrase my question another way. Are you opposing this because of the unilateral give-up of $105,000, or are you opposing it to insure the competitive status of the one U.S. assembler?

Mr. Miller. Well, our primary concern, Mr. Frenzel, is the effect on the U.S. producer.

Mr. Frenzel. Thank you.

Chairman Gibbons. OK. Go to the next bill.

Mr. Miller. Thank you, Mr. Chairman.

The administration opposes enactment of H.R. 3817. Again, we believe that we have an instance here where unilateral tariff reduction could affect the competitive posture of a U.S. producer.

In this particular case, the company involved has invested a substantial sum of money to bring its plant into conformity with Environmental Protection Agency standards. If this bill were enacted, we believe the U.S. producer will close its domestic plant, which is currently operating at only 38-percent capacity. Such a closure would result in a loss of 200 to 300 jobs in an area of already high unemployment and a large financial loss to the firm.

Chairman Gibbons. All right.

Mr. Frenzel. Excuse me, Mr. Chairman. The revenue loss is about $400,000 on this?

Mr. Webb. We estimate the revenue loss in 1984 to be $364,000, declining to $310,000 in 1987.

Mr. Frenzel. Thank you. And there is one domestic producer?

Mr. Miller. Yes, Mr. Frenzel. There is just one domestic producer.

Chairman Gibbons. Where do we import it from?

Mr. Webb. We import it from Denmark, Mr. Chairman.

Chairman Gibbons. The only domestic producer is Monsanto, is that right?

Mr. Miller. Yes, Mr. Chairman.

Chairman Gibbons. Thank you very much. Go to the next bill.

Mr. Miller. Mr. Chairman, if I could ask the committee's indulgence, the next bill will be addressed by the U.S. Department of Agriculture and I would like to ask if we could just skip over the agricultural bills and have those addressed by Agriculture at the end of my testimony.

Chairman Gibbons. Well, I want to look at motors, spindle motors.

Mr. Miller. I am sorry. The next bill on my list is H.R. 4255, fresh asparagus.

Chairman Gibbons. All right, I got you. You are way over on H.R. 4255. All right. Another one of yours, Mr. Frenzel. Go right ahead, Mr. Miller.

Mr. Miller. Thank you, Mr. Chairman.

The next bill I have is H.R. 2667 and the administration has no objection.

Mr. Frenzel. What is your next bill?

Mr. Miller. H.R. 2667, yttrium, for which we have no objection.

Chairman Gibbons. All right. Let us go to the next bill.

Mr. Miller. The next bill I have is——

Chairman Gibbons. There is no objection to the H.R. 2667?

Mr. Miller. That is correct, Mr. Chairman. The next bill that I have is H.R. 2947. We are opposed to this bill as written, but we would have no objection were the bill modified to suspend the duty only for metallurgical grade fluorspar.

As currently written, the bill would suspend the duty on both metallurgical grade fluorspar and acid grade fluorspar.

Chairman Gibbons. Acid grade?

Mr. Miller. Acid grade.

Mr. Frenzel. Can I ask our staff whether we have had fluorspar suspensions in the past?

Chairman Gibbons. We sure have.

Mr. Frenzel. Is this an extension or is this a broadening?

Mr. Miller. Mr. Frenzel, we believe that there have been duty suspensions in the past but it is currently expired and this would be a revival. I am sorry; let me correct myself. It has been proposed before but never enacted.

Mr. Frenzel. Yes, I think that is what our staff has confirmed, and you would accept on metallurgical grades only?

Mr. Miller. Yes, that is correct, Mr. Frenzel.

Chairman Gibbons. All right, let us go to the next bill.

Mr. Miller. Mr. Chairman, the next bill that I have is H.R. 3174, and we oppose enactment of this legislation. Again, we believe the unilateral tariff reduction proposed here could affect the competitive posture of a U.S. producer.

In this instance there is production in the United States for which there is already strong foreign competition. Evidence of the extent of this competition is the fact that the Department of Labor certified on February 25, 1981, that foreign imports were an important cause of loss of jobs in the industry. Also, the Department of Labor has initiated as of March 31, 1983, another trade adjustment assistance investigation for products covered by the proposed legislation.

Chairman Gibbons. All right. Are there questions about this?

Mr. Frenzel. I have a question. Apparently Korean imports come in duty free; is that correct?

Mr. Miller. That is correct. However, the majority of the imports are from Japan.

Mr. Frenzel. Yes, that would be the ones in question here. The question is whether we want to give Japan GSP to equal Korea.

Mr. Miller. Yes.

Mr. Frenzel. Thank you.

Chairman Gibbons. All right, the next one.

Mr. Miller. Thank you, Mr. Chairman.

The next bill that I have is H.R. 3311. We have no objection.

[Pause.]

Chairman Gibbons. I will explain why my colleagues are teasing me here. The call of the voice from the Democratic Caucus is pleading for someone to come over and listen to Senator Hart. They have not been overwhelmed by people who want to go and listen this morning. We will get that interruption a few times today.

OK, go on. Take up the next one.

Mr. Miller. Thank you, Mr. Chairman.

The next bill I have is H.R. 3312, no objection.

Chairman Gibbons. All right. Let us go to the next one.

Mr. Miller. H.R. 3313, no objection.

Chairman Gibbons. Good.

Mr. Miller. H.R. 3345, no objection.

H.R. 3709, no objection. I wish we had started on this page.

H.R. 3731, we object to enactment of this bill. Mike Hathaway from the Trade Representative's Office is here to speak on that bill.

Chairman Gibbons. This is the clock radios you are talking about—H.R.3731?

Mr. Hathaway. Yes.

Mr. Miller. Yes, clock radios.

Chairman Gibbons. All right. This fellow is a very important man on this committee. He is the ranking Republican. You had better tell us why you are against his bill.

Mr. Hathaway. I would be happy to. We have a very large amount of trade in clock radios. It is substantially with countries with whom the United States has a great interest in getting trade-liberalizing measures adopted on their part. The amount of duties collected is $9.5 million annually. This would be a 3-year duty suspension for a product upon which the duty is already suspended until next fall, until September of 1984.

The administration has a proposal that is being considered now for the extension of the generalized system of preferences [GSP] which would provide for an opportunity to consider market access in most of the major suppliers of clock radios when determining whether or not to provide GSP treatment for products of interest to those countries.

In particular, we are talking about Hong Kong, Singapore, Taiwan, and Malaysia. We are also talking about a substantial amount of trade with Japan. This bill would, frankly, be a unilateral giveaway of a significant amount of trade of benefit to countries with whom we would like very much to at least have an opportunity to get something in return.

When we considered this bill recently on the Senate side the duration of the duty suspension was reduced to 1 year. I think even that is excessive. We have a duty suspension in place until September 1984 already. There would be sufficient time to consider further duty suspension if there is not action on the GSP legislation before that time and if there is not time for the administration to try to get something for this very significant trade concession.

So for all of those reasons the administration is opposed to a duty suspension on clock radios. It is just too big an item and it is with countries with whom we think we can get something for this in the nature of trade concessions.

Chairman GIBBONS. We do not expect to get anything from Hong Kong and Singapore, do we?

Mr. HATHAWAY. We certainly have a large number of concerns with them in the services sector and investment areas where we have a substantial interest on behalf of the United States companies who have problems establishing service industries in those countries.

That is, in part, the reason for the administration's proposal for GSP extension. We would not be considering just access for goods but market access problems in trade in goods and services, and investment problems as well. So we do have something that we could conceivably get for it, and it is just, in our view, too big a reduction on an item that has too much trade.

The existing duty suspension has almost another full year to run before it expires. This would add 4 years to the duty suspension. It is something that we would prefer not to see. We are in the business of trying to negotiate more open markets abroad. We would prefer to see the ability to use this size of bargaining chip and not just give it away.

Mr. SCHULZE. What has happened to the volume of imports during the suspension period? Have they increased or decreased or stayed about the same?

Mr. WEBB. Imports over the last 5 or 6 years have been irregular, Mr. Schulze. In 1978 they were roughly, by value, $120 million, and in the most recent year they were $115 million. Those are the peak figures. In 1979, the lowest figure I have is $89 million.

Mr. SCHULZE. Now when we made this move it seems to me that the plea was made that it was going to save the consumer money. Do we have any figures on whether the prices to the consumers have been reduced or increased or whether this actually did save the consumer money?

Mr. Miller. Mr. Schulze, we have no data on that subject. Possibly that data could be supplied by the one company that has benefitted from the legislation.

Mr. Schulze. My understanding is there are no domestic manufacturers. Is that correct?

Mr. Miller. That is correct.

Mr. Schulze. To the best of your knowledge, are there any domestic producers discussing going into the business or thinking about going into the business?

Mr. Miller. Well, Mr. Schulze, not that we are aware of, or certainly no one has contacted the Department on this legislation in that regard.

Mr. Schulze. Thank you.

Mr. Frenzel. This is a $9.5 million bill, and that is why you suggest that we can gain concessions in exchange for this sort of reduction?

Mr. Hathaway. The size of it has a substantial amount to do with the degree of our opposition. It is the amount of the trade involved, the amount of duties collected, and the countries from whom we import clock radios. Those countries are advanced developing countries and with Japan, we have a substantial interest in getting increased market opportunities in all those countries.

Mr. Frenzel. Thank you.

Chairman Gibbons. I think the gentleman from Minnesota stated it wrong. There are 9.4 million units.

Mr. Frenzel. I am sorry.

Chairman Gibbons. And $109 million worth of imports.

Mr. Frenzel. It says on page 4 of the bill analysis that the revenue loss is estimated at $9.5 million, based upon 1981 stats. From what I understand, it is hard to distinguish between radios, clock radios, stereos with clocks on them, and other items that may have clocks on them or may not have, but it is a significant amount of money, Mr. Chairman.

Chairman Gibbons. All right, fine. We will explain that to Mr. Vander Jagt. Go ahead.

Mr. Miller. Thank you, Mr. Chairman.

The next bill that I have is H.R. 3740, and we have no objection.

Chairman Gibbons. All right, fine.

Mr. Miller. Continuing, then, to H.R. 3741, no objection.

Chairman Gibbons. No objection?

Mr. Miller. No objection. H.R. 3742, no objection.

Chairman Gibbons. All right.

Mr. Miller. H.R. 4035, no objection.

Chairman Gibbons. All right.

Mr. Miller. H.R. 4223, no objection.

Chairman Gibbons. Just a second. Let me turn pages here. That was 4225?

Mr. Miller. Mr. Chairman, H.R. 4223.

Chairman Gibbons. All right. Fine. Thank you. Go right ahead.

Mr. Miller. Thank you, Mr. Chairman. H.R. 4224, no objection.

Chairman Gibbons. All right.

Mr. Miller. H.R. 4225, no objection.

Chairman Gibbons. All right.

Mr. Miller. H.R. 4329, no objection.

Chairman GIBBONS. H.R. 4329? That is on the last page. All right, go ahead.

Mr. MILLER. Thank you, Mr. Chairman.

The next bill that I have is H.R. 2711.

Chairman GIBBONS. Let us locate that one. That is on page 4 of the index. Go right ahead.

Mr. MILLER. Thank you, Mr. Chairman. I am going to ask Mr. Hathaway of the Trade Representative's Office to address this bill.

Chairman GIBBONS. All right.

Mr. HATHAWAY. Mr. Chairman, the bill to increase however slightly the duty on apple and pear juice is simply an attempt to circumvent the countervailing duty laws of the United States by creating a dutiable product out of one that is now duty free, and therefore slipping this particular article into having an injury test where no injury test is now required by U.S. law.

The history, if you remember, of the injury test is that before 1975, before the Trade Act of 1974, duty-free items were not subject to countervailing duty actions in the United States. As a result of those articles, duty-free articles not being subject to countervailing duty actions, we had no grandfathering of the lack of an injury test under the GATT. When duty-free items were added to the countervailing duty law in 1975, an injury test was required by section 303 in the Trade Act of 1974 where it was required by the international obligations of the United States. In fact the GATT does require us to provide an injury test unless the protocol provisional application applied. It only applied to dutiable items. So duty-free items, at all times since they have been subject to the countervailing duty laws of the United States, have been subject to an injury test where it was so required by our international obligations.

What this particular bill does is attempt to change that. While the amount of duty is small, it would impair a bound concession. We would oppose it for that reason. We are also opposed to it as a matter of principle, because it attempts to do something to affect countervailing duty laws and our international obligations, manipulating them in a way which we would be very much opposed if other countries attempted to manipulate their trade laws in a way to affect trade actions on a particular case.

So, our objection to this bill is based more on principle, on what we expect of our trading partners, rather than the actual amount of compensation which we might be required to pay. I might add that with this sort of bill and with others, increases in duty are complicated more because we do not have authority to negotiate compensatory concessions. I know that is something in legislation that this committee has favorably considered and which we strongly support, but the absence of compensation authority does make this kind of provision even more objectionable.

Chairman GIBBONS. All right. Are there questions?

Mr. FRENZEL. How much are we talking about here? What is this one-tenth of 1 percent going to equal?

Mr. WEBB. $92,000 a year, Mr. Chairman.

Mr. FRENZEL. $92,000, and so the attempt here is to create sort of a technical tariff so that we can try to countervail.

Mr. HATHAWAY. Without an injury test. That is correct.

Mr. **Frenzel**. And every nation that imports to us or that exports to us from which we import now has an injury test.

Mr. **Hathaway**. Every country with whom we have an international obligation to provide them an injury test on duty free merchandise would have that, and in fact——

Mr. **Frenzel**. Can you tell me about the present country from which we import?

Mr. **Hathaway**. The current country from which the main concern is——

Mr. **Frenzel**. Well, we know which the countries are, but do they all have—are they all signatories?

Mr. **Hathaway**. We have an international obligation with the countries concerned.

Mr. **Frenzel**. All of them?

Mr. **Hathaway**. Yes, sir.

Mr. **Frenzel**. Every single one of them?

Mr. **Hathaway**. The major concern is with Argentina in this case. We do have an international obligation with Argentina.

Mr. **Frenzel**. And they give us more than a third of our imports?

Chairman **Gibbons**. Almost two-thirds.

Mr. **Webb**. In 1982, 39 percent from Argentina.

Mr. **Frenzel**. And so what we are doing is violating one of our agreements if we pass this bill, and we would then be obliged to give some sort of compensation, would we?

Mr. **Hathaway**. It is debatable. Given the fact that there is a possibility that we could be faced with this, I would not want to have to characterize how much compensation we would be liable to, but cetainly we could make——

Mr. **Frenzel**. Certainly our partners would demand compensation. Is that fair to state?

Mr. **Hathaway**. That is fair to say, yes.

Mr. **Frenzel**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Any other questions about apple and pear juice?

[No response.]

Chairman **Gibbons**. Let us go on to the next bill.

Mr. **Miller**. Thank you, Mr. Chairman. The next bill on my list is H.R. 4321, and with the committee's permission, I would like to pass over this and have the Department of Agriculture address it in a few minutes. That then brings us to three bills, H.R. 3158, H.R. 3159, and H.R. 3299, which I am going to ask Mr. Art Rettinger of the Customs Service to address.

Chairman **Gibbons**. I hope you support those two. You requested me to introduce them. You have not changed your mind, have you?

Mr. **Rettinger**. Not at all.

Chairman **Gibbons**. OK.

Mr. **Rettinger**. More so now than ever, as a practical matter, the administration supports H.R. 3158, which would implement the Customs Convention on Containers, 1972. The Customs Convention on Containers is a modern, improved version of the Customs Convention on Containers of 1956, to which the United States has been a contracting party since 1969.

The Senate gave its advice and consent to the ratification of the 1972 convention on September 15, 1976. However, before the

United States can deposit its instrument of ratification and participate in the administration of the convention, legislative action is required to implement articles 10 and 11 of the convention. H.R. 3158 would provide duty-free admission of repair parts, accessories, and equipment of temporarily admitted containers, thereby bringing the U.S. Customs treatment into conformity with the Convention of Containers for 1972.

Chairman GIBBONS. Good. Are there questions about this bill?

Mr. FRENZEL. On 58, no.

Chairman GIBBONS. All right. Let's go to 3159.

Mr. RETTINGER. H.R. 3159 is an administration proposal. Formal comments were submitted to the committee on September 29, 1983. In the recent court case of *United States* v. *Heraeus-Amersil*, the Court of International Trade and subsequently the Court of Customs and Patent Appeals determined that increased duties determined to be due on liquidation are in fact not due and payable by the importer until either the protest period has expired without a protest being filed or, where a protest was filed and denied, the time to appeal to the Court of International Trade has expired. Passage of the bill would return Customs transactions to the pre-*Heraeus* conditions whereby all bills for increased or additional duties which were determined to be due on a liquidation or reliquidation were in fact due and payable on that date. Liquidation is the final ascertainment and computation of the importer's duty liability. While the importer, of course, has the right to protest the assessment of increased or additional duties, that right of protest does not in any way alter the basic nature of the liquidation as the final ascertainment of that duty.

The *Heraeus* decision has had a severe impact on the ability of Customs to collect duties owed the United States by increasing the number of protests Customs has received for the simple reason that when an importer protests a high assessment of duty on liquidation, he can basically postpone payment for probably a minimum of 1 year and perhaps up to 3 years with currently no interest accruing on that amount.

In fact, protests to Customs have increased approximately 30 percent in the last 2 years. The increase in the amount of protests has hampered Customs' ability to respond to them. The fact that we are having difficulty responding to protests will probably ultimately increase the number of Customs decisions on denials of protests being contested in the Court of International Trade. As our resources become pressed, a well-reasoned opinion may be more difficult to produce.

Finally, severely delaying Customs' authority to collect outstanding duties owed the Government is vastly increasing the amount of imputed interest that the Government loses. Between December 1981, and September 1983, less than 2 years, supplemental duty bills unpaid at the end of 30 days had risen by more than 300 percent. Supplemental duty bills over 90 days old had risen more than 370 percent. In fact, currently over 40 percent of the value of supplemental duty bills issued during the past fiscal year remained unpaid at the end of over 90 days.

Without the passage of H.R. 3159, we can expect these trends to continue.

Finally, while H.R. 3159 would bring importers back to the pre-*Heraeus* conditions regarding when increased or additional duties must be paid, it does grant a major benefit not available to importers prior to that decision in the form of interest on amounts paid as increased or additional duties if in fact the importer ultimately sustains his position on protest or by appeal to the court.

I note that the bill in no way affects overpayments or underpayments of estimated duties as these payments have traditionally been recognized as separate and distinct from liquidations for refunds or liquidations involving additional assessments. Customs neither pays interest on liquidations for refund nor requires interest to be paid on underpayments of estimated duties which were accepted by a customs officer.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. I seem to have lost my place here. I think that the committee wants to be sure that you have appropriate weaponry to collect Customs amounts and to prevent your overdue receivables from getting out of hand as they seem to be doing. However, section 1, subparagraph C, looks to me like you are trying to go back to your old business of having duties payable sooner than the 10 days. Treasury and Customs have been trying on a regular basis to get that squeezed down to 3 days for cash management purposes, and we usually try to talk you out of that.

Now, in that particular section, it looks to me like you are going to be collecting interest back to day one, and I think our policy has always been day 10.

Mr. RETTINGER. No, this has no effect whatsoever on the deposit of estimated duties. This is solely after liquidation. The 10-day, 3-day routine that we have gone through periodically, and I will let it go at that, involves deposit of estimated duties at the time of entry or filing of the entry summary. After that, once those duties are accepted by Customs as a valid estimated duty, Customs ultimately, and it may be days or months afterwards, will liquidate the entry and make a determination as to the final amount that the importer owes to the Customs Service or in fact sometimes a refund is issued. Only after liquidation would this bill take effect.

Mr. FRENZEL. I do understand that, but that liquidation is the first time you have put your foot down on how much is owed.

Mr. RETTINGER. Formally.

Mr. FRENZEL. But you are going to collect interest from the instant that you make that determination if the bill is not paid within 25 days.

Mr. RETTINGER. Right. They will have 25 days to pay.

Mr. FRENZEL. Would it not be more in accordance with our precedent if they paid interest after the 10 day of the formal liquidation?

Mr. RETTINGER. In other words, if they did not pay within 25 days, interest would only accrue after the 10 day?

Mr. FRENZEL. That is correct.

Mr. RETTINGER. To the best of my knowledge, this is——

Mr. FRENZEL. Well, as a matter of fact, in commercial terms, normally, if you do not pay the invoice terms, interest begins at the time you did not make the cut, and I assume if you have a 25-day pay period, in most instances you would start collecting interest from that date, but you are going all the way back to the date of liquidation.

Mr. RETTINGER. Well, in large part I guess it is equivalent to a credit card transaction, where you are given 25 freebies, and after that——

Mr. FRENZEL. But if it is a credit card transaction, and you have 25 days to pay. Interest begins after the 25th day. And if you do not pay in 25 days, you are going back to day one. I would like to see you maybe go back to day 10, simply to conform with previous agreements, and wonder if the subcommittee made that determination, if it would be a matter of enormous disappointment to the Service.

Mr. RETTINGER. No. We are more interested in getting the bills paid. The interest, I think, is more a form of trying to help get them paid. If it is day 10, I do not think it is going to make that significant a difference to the Government.

Mr. FRENZEL. It looks to me like the bill is necessary, and that is a minor point, and you and I and others can discuss it. Thank you.

Chairman GIBBONS. Any other questions?

[No response.]

Chairman GIBBONS. Go on. H.R. 3299.

Mr. RETTINGER. 3299. I have submitted to the staff a statement made by Stuart P. Seidel, Assistant Chief Counsel of Customs, which was made before Mr. Hughes' subcommittee on June 23, 1983. The administration supports the purposes and provisions of title 2 of H.R. 3299. That is not to say the administration does not support any of the provisions of 3299, but I believe only title 2 is currently being heard at this time.

We appreciate your past support. H.R. 7140, the bill containing similar provisions to this title 2, passed this subcommittee and the House last session. We understand that during the past week Mr. Hughes' subcommittee has reported out a very slightly amended version of H.R. 3299, making minor amendments to the bill.

Title 2 of H.R. 3299 has three main purposes. The first would allow for increased administrative forfeiture of drug-related conveyances, particularly vessels and aircraft. Currently forfeiture by judicial decree requires up to 18 months of court proceedings. While the time for these judicial forfeitures is extensive, a very high percentage of the judicial proceedings for drug conveyances go uncontested. This portion of title 2 would allow for the administrative forfeiture of the conveyances, but would also allow for the innocent owner to post a relatively small bond in order to receive the full plenary review by judicial proceedings should he or she so desire.

This provision, as well as the second major portion of title 2, concerning the establishment of a Customs forfeiture fund, was strongly endorsed in a report of the General Accounting Office dated July 15, 1983, which detailed the problems of Federal agencies in dealing with long-term storage of seized conveyances and how this long-term storage adversely affects the cost to the Government of the law enforcement activities and the loss to the Government of the value of such conveyances when ultimately forfeited.

The second portion of title 2 concerns the establishment of a Customs forfeiture fund. This fund, which would be established by section 207 of the bill, would receive the proceeds of sale of all forfeited conveyances and property, and would be primarily available to pay for all fixed expenses associated with the seizure, detention, and sale of merchandise held for forfeiture under the laws enforced or administered by the Customs Service.

The fund would also pay for certain liens associated with the forfeiture of property, and the version reported out of the Subcommittee on Crime would also cover the purchase of certain equipment to be utilized for law enforcement purposes as recommended in that GAO report. The fund would correct an anomaly in the appropriations process whereby the better job Customs does in enforcing the laws—seizing drug conveyance property, caring for it, seizing drugs and other contraband, and caring for it—the more the Customs appropriations suffered and the less money was available for the actual law enforcement work.

A third major portion of title 2 would allow, under certain circumstances for the transfer of forfeited property to appropriate state and local officials.

Finally, the bill would also grant to the Customs Service general arrest authority to make arrests for all Federal felonies. This would not extend any search or investigative authority of Customs officers, but would merely place their arrest authority on a par with other Federal officials such as those of the National Marine Fisheries Service, of NOAA, Alcohol, Tobacco, and Firearms, DEA, FBI, Coast Guard, and postal inspectors.

Chairman. GIBBONS. Are there questions about this bill? I notice that we are amending a law that goes back to 1844, in which the administrative forfeitures were limited to $100. I wonder, is this difference a measure of inflation, $100 to $100,000?

Mr. RETTINGER. Well, the $100,000 is not quite as important as the fact that the drug conveyances themselves can go the administrative forfeiture route. As a practical matter, I would say virtually—I will not say all, but a high percentage go virtually uncontested for the simple reason that to contest in court you have got to say, yes, that was my boat that was being used to transport those 5,000 pounds of marihuana, and not many people are willing to come in and say that as a practical matter.

At the same time, a lot of these have been damaged in the use as drug conveyances. Where they are held for 12 or 18 months, as pointed out in the GAO report, they tend to deteriorate significantly, and in fact sometimes the cost of storage and maintenance of the vessels actually costs more than the Government actually receives on forfeiture and sale of the vessels.

Chairman. GIBBONS. How do our forfeiture and sales laws compare with the forfeiture and sales laws of other countries? Have you looked at that?

Mr. RETTINGER. I have not personally. I believe there are people in my agency who have, and we can come back and address that if you would like.

Chairman. GIBBONS. Well, just one of the things that concerns me, I just had a matter in my own constituency about some ships that were under seizure by Brazil, and they were not involved in contraband unless shrimp are contraband in Brazil. Are we setting a precedent that we will automatically forfeit vessels that are picked up by other countries? I know we have had trouble with Peru in the past, and Ecuador, and Honduras, and all of those other countries seizing our vessels when they were allegedly fishing in their waters.

Mr. **Rettinger**. The bill provides for administrative, not automatic, forfeiture. Most of the vessels that you would be talking about would be over the $100,000. The bill only covers drug-related vessels and conveyances for the over $100,000. A lot of these are the mother ships. In the past we have had situations where countries themselves, through their state departments, have expressed special interest in conveyances, and the Customs Service has been able to work through the State Department in appropriate circumstances to arrange either for transfer of the ships back to the country or an innocent owner, depending upon the circumstances.

Chairman. **Gibbons**. Does this bill limit it strictly to drugs?

Mr. **Rettinger**. For conveyances over $100,000, yes. Plus under $100,000 for drugs or nondrugs. Even now the amount is $10,000. Where there is a party contesting the forfeiture, first of all, they have a right to post a bond to obtain judicial forfeiture or to petition for mitigation.

Chairman. **Gibbons**. I think I am not making myself clear. What I am worried about is that other nations around the world have a tendency to read back our laws to us and tell us, and, in this case tell us that we are forfeiting ships of this value or that value, why can't we? My question is this: Is the forfeiture of vessels limited strictly to drugs?

Mr. **Rettinger**. The administrative forfeiture we are dealing with——

Chairman. **Gibbons**. Yes, that is what I am talking about, the administrative forfeiture.

Mr. **Rettinger**. The bill does not extend forfeiture provisions of law in any way, shape, or form. What it changes is how the forfeitures occur.

Chairman. **Gibbons**. I understand.

Mr. **Rettinger**. At the same time, they have a right to judicial forfeiture if they so request.

Chairman. **Gibbons**. I understand all that.

Mr. **Rettinger**. It should not affect our international relations in that regard. And maybe I am missing the point. If I am——

Mr. **Frenzel**. Does it only apply to vessels or vehicles that have been hauling drugs?

Mr. **Rettinger**. Yes, forfeiture could be done administratively for any vessel or vehicle which has been hauling drugs.

Mr. **Frenzel**. It does not apply to shrimp boats in any event, does it?

Mr. **Rettinger**. Where the law, and the law would have to currently apply also, allows for any forfeiture, and I do not believe it does with regard to shrimp boats unless there are serious violations of our law currently, such as hauling drugs.

Chairman. **Gibbons**. What I am worried about is that there is controversy over where people can fish around the world. Some countries have been seizing our vessels not just recently but over the last 20 years. My concern is, What are we doing here or what are we being asked to do? Is this going to encourage other countries to mirror our law? Have you taken a look at that? What I am trying to say is that I would assume our fishing vessels are just engaged in fishing. They are not engaged in the hauling of narcotics. How does our law compare with other laws around the world? Are you familiar with that?

Mr. RETTINGER. Well, I do not believe we have looked at that specifically, but as a practical matter, even should other countries mirror these provisions, I do not believe that it would apply to fishing violations, particularly where a vessel was over the $100,000 range.

They would get full judicial forfeiture protection under the foreign country's laws.

Chairman GIBBONS. I am still getting back to two questions. Are we limiting our administrative forfeiture just to vessels that are engaged in the hauling of, or allegedly engaged in the hauling of narcotics?

Mr. RETTINGER. Yes, if they are over $100,000. If there is any other—if there is a vessel that violates Federal law to a degree that it would be subject to forfeiture, but it is over $100,000 and the violation is not drug related, then customs would proceed as they do today with full judicial forfeiture, whether or not it is contested.

Chairman GIBBONS. OK. I will take another look at this.

Does anybody else have any questions?

Mr. FRENZEL. Mr. Chairman, I am a little nervous about the bill, because it is really too important for this subcommittee. I note we create two trust funds, one the drug enforcement fund and one the customs forfeiture fund. Both of those from a cursory reading of the bill appear to be subject to appropriations for the use of the funds, and I wondered if the customs representative would affirm that.

Mr. RETTINGER. Yes, the fund is subject to appropriations, and all expenditures would be reported periodically to Congress.

Mr. FRENZEL. There is a problem or it might be a problem for this committee, in that the funds available do not cancel; is that correct, in both funds? And then can be expended years later if not used this year?

Mr. RETTINGER. Well, currently, if I have my figures correct, it costs the Customs Service somewhere in the range of $8 to $9 million to care for seized property, both contraband and vessels, vehicles and aircraft.

Mr. FRENZEL. And that is the cost of protection and storage and so forth?

Mr. RETTINGER. Yes, sir.

Mr. FRENZEL. OK. But I really think that the oversight of those particular funds ought to be the charge of the full committee and that somebody on the staff ought to look at those. I think this committee has been very interested in what you are trying to do in title II and very supportive.

However, the section 589, which is the enforcement authority, which has been the principal interest of Congressman Hughes, does excite some comment, particularly the idea that you need to make an arrest without a warrant for any offense against the United States. I think there is some question whether your agents who are skilled in customs matters should be allowed to issue a warrant for any offense. We are wondering, I am wondering, and others are wondering, why that is in fact necessary.

As part of that also, that subsection (4) about performing any other law enforcement duty that the Secretary of the Treasury may designate. He may designate you to protect the President or guard Fort Knox or to go out after cattle rustlers. Why does he need that very broad grant of authority and why does your service need it?

Mr. RETTINGER. OK. First of all, at the present time customs officers' authority is primarily limited to narcotics and strictly customs offenses. At the present time customs officers do not even have the authority to arrest an individual for assault on a fellow customs officer at a lonely, deserted border crossing point or virtually anywhere else.

We cannot make an arrest for a theft from interstate shipment. That is, if a theft is occurring prior to the customs port of entry we can make an arrest. If we clear the shipment, then two blocks down we see it being hijacked, we have to worry about making an arrest or participating in any shape or form under 50 different State citizens arrest statutes for those States that have citizens arrest statutes.

Consequently, our officers are put in very awkward situations and situations that have not had to be addressed by other Federal agencies. All of our people are fully trained police officers, as that term is used. They are currently authorized to carry firearms under 26 U.S.C. 7607. That is not an extension of their authority.

But what it does is it puts in one place in the Tariff Act of 1930 applying to customs basically the full authority which will be necessary by customs officers to enforce both their duties and the duties that they may end up in by virtue of their positions.

The Secretary of the Treasury cannot authorize a customs officer to do something that the Secretary of the Treasury is not authorized to do. This would not extend or expand customs officer authority in any way to investigate, search, seize, or anything else.

Mr. FRENZEL. Well, perhaps you may not think so, but it certainly looks to me in a casual reading, that the authority is expanded enormously, particularly with respect to No. 4.

Why, if you have now been given a chance to make warrantless arrests against any offender, do you need to have a second broad grant of authority to do whatever else the Secretary of the Treasury wants you to do? You have now been elevated above the status of the FBI.

Mr. RETTINGER. No, not at all. It is certainly not intended to be that way and I hope it does not end up, or at least appear to be that way.

In order to assist in the 1980 Mariel boatlift, many officers had to be designated as special deputy U.S. marshals. And at the same time, they had to be designated as special deputy U.S. marshals to participate as the security officers on aircraft in the midseventies, because if you recall customs officers were the air enforcement officers before the FAA took over the program.

These are the types of things that may require the designation by the Secretary of the Treasury, with the approval of the other agencies involved. In this case it would be the FBI or the Department of Justice.

Mr. **Frenzel**. Thank you.

Mr. Chairman, I think this is, of course, only peripherally under our jurisdiction, and I think we are better to discuss these things separately and with Congressman Hughes. But certainly, with the exception of those two funds, which somebody on the general committee staff ought to look at, I have no further questions.

I think we do need to update the act and bring the Customs Service into this century.

Chairman **Gibbons**. Any other questions about this point?

[No response.]

Chairman **Gibbons**. Let me ask the witness a question before we leave. Yesterday I got a phone call I was not able to respond to because I did not get to it until too late last night from someone alleging that, while Congress was going to be in recess, someone was going to, in effect, combine Customs and Immigration and Naturalization Service and eliminate the Customs Service.

What do you know about this?

Mr. **Rettinger**. Only rumor and innuendo. I know very little about that as a practical matter, and I think somebody in a much better position to talk to it than myself would need to be consulted.

Chairman **Gibbons**. So you are neither admitting nor denying?

Mr. **Rettinger**. Yes. [Laughter.]

Chairman **Gibbons**. Would you take the word back to whoever that person is that we would like to have some chance to take a look at that before any kind of a coup is carried off in our absence? Most of us will not be off this globe. Many of us will be in Eastern Europe at that time. I realize that is not a place where the communications can be carried on very easily.

But, since we work so well together, I would appreciate you telling whoever that person is, that may be planning or may not be planning, that we would like to continue our relationship.

Mr. **Rettinger**. Speaking personally, I thank you very much, sir.

Mr. **Frenzel**. We are sometimes accused of being hard on the Customs Service, but we have great respect and affection for it and we want to help it, not abolish it.

Mr. **Rettinger**. Thank you.

Chairman **Gibbons**. Are there other bills that we have got here?

Are you in favor of H.R. 3299 or against it? How did you come down there?

Mr. **Rettinger**. Very much in favor, sir.

Chairman **Gibbons**. All right, fine.

What else have we got today?

Mr. **Miller**. Mr. Chairman, the next bill on my list is H.R. 4232. No objection.

Chairman **Gibbons**. That is on page 5, Mr. Brooks. Naphtha, OK.

Mr. **Miller**. Mr. Chairman, the next bill that I have is H.R. 4296.

Chairman **Gibbons**. Mr. MacKay's bill. That is regarding orange juice; is it not?

Mr. **Miller**. Yes, Mr. Chairman.

Chairman **Gibbons**. I assume you are supportive of that one, are you not?

Mr. **Miller**. Mr. Hathaway is going to address this bill.

Chairman **Gibbons**. All right, Mr. Hathaway.

Mr. **Hathaway**. The administration does not support the enactment of the orange juice concentrate reclassification bill. What that would do is impair tariff concessions which we have made and would set——

Chairman **Gibbons**. Speak clearly. People are listening now.

I am surprised. I understood you all were for this bill.

Mr. **Hathaway**. No; we do not support the legislation.

Chairman **Gibbons**. Sir?

Mr. **Hathaway**. We do not support the legislation.

Chairman **Gibbons**. Tell me why you do not support it.

Mr. **Hathaway**. The items that would be subject to a change in classification are the subject of bound tariff concessions which the United States has granted in previous negotiations. This would impair those concessions and it would subject us to claims of compensation or, in the situation that we are in now, where we have no authority to negotiate compensation, to retaliation.

We have received a note from the Canadian Government on this, because Canada——

Chairman **Gibbons**. Do they produce orange juice in Canada?

Mr. **Hathaway**. Canada is a substantial exporter of the reconstituted juice which is the subject of this legislation.

Chairman **Gibbons**. They are selling water. They are not selling orange juice. They are selling water, are they not?

Mr. **Hathaway**. This is—if I could go back to Customs' previous statement on what constitutes an article of commerce—a complicated question. What happens is that juice concentrates, when reconstituted, creates a new product and it is a product that under U.S. law is a product of the country in which that substantial transformation occurs. It is those products, when imported into the United States, that are entitled to the duty which we have agreed to in previous negotiations.

So products that are imported from Canada, even though they are made from imports from other countries, from Brazilian orange juice concentrate, are entitled to the tariff concession rate which we have previously agreed to.

It is something, I might add, that—the substantial transformation rule—is a fairly uniform practice throughout the world with some variations. The rates of duty that apply to concessions for U.S. exports are similarly treated. If a product is made in the United States from imports from several different countries and it is transformed into a U.S. article, it is entitled to the duty concession agreed to to be provided to the United States.

So we benefit from this kind of rule in the same way that in this particular instance we suffer a disadvantage because countries like Canada can take advantage of that, and in fact they do it. Our businessmen do it, too. Everybody does it.

The fact of the matter is that if we change the duty on it we will be impairing a concession and we will be subject to claims of compensation or retaliation, and it is for that reason the administration cannot support the legislation.

Chairman **Gibbons**. Have you not changed your position since the Senate?

Mr. **Hathaway**. No. My statement in the Senate was exactly the same, and I will say it again very carefully and slowly. The administration does not support the legislation.

Chairman **Gibbons**. In other words, you just think adding water to something is an important commercial step in the operation?

Mr. **Hathaway**. We make tariff concessions based on the existing U.S. law and rulings on what is an article of a particular country of origin, so that the U.S. customs law and Customs Court decisions are in fact incorporated into our tariff concessions. And if an article through some process is substantially transformed into a new and different article of commerce, whatever the rulings are on that—and these are longstanding rulings that have been made by the Customs Service and the Customs Court of International Trade—then we are obliged to uphold that.

In many situations the transformations that are made appear to be minor and operate to the disadvantage of U.S. interests. There are many instances where they can operate to their advantage. There are many instances in U.S. exports where they operate to our advantage.

But we, like other countries, when we make a tariff concession do it on the basis of the law that applies, and that includes all the tariff schedules and the headnotes, and that is how we take our position now. It is on the basis of the concession that we have agreed to.

If another country tries to change a concession on a similar rationale, we would similarly demand compensation or be prepared to take retaliatory action.

Mr. **Pease**. Would the chairman yield?

Chairman **Gibbons**. Certainly.

Mr. **Pease**. You stated a moment ago carefully that you do not support this legislation, right?

Mr. **Hathaway**. That is correct, Mr. Pease.

Mr. **Pease**. Would it also be correct to say that you oppose the legislation?

Mr. **Hathaway**. It would be correct to say that we do not support the legislation.

Mr. **Pease**. They are drawing a fine distinction, Mr. Chairman.

Chairman **Gibbons**. Yes, they are drawing a fine distinction. I am not going to push them any further.

Mr. **Pease**. Would the gentleman continue to yield?

Chairman **Gibbons**. Go right ahead.

Mr. **Pease**. Speaking of fine distinctions, I recall that when we were discussing the Caribbean Basin initiative legislation one of the tests referred to substantial transformation, and I think it is really interesting that "substantial transformation" means adding water to a concentrate.

Mr. **Hathaway**. Mr. Pease, I think you would probably be even more surprised if you read under the probably 11 or 12 different statutes that the United States has come up with on rules of origin, to see how much apparent inconsistency there is. These are statutes that have been around since the beginning of U.S. Customs administration. They have many different purposes and they have many different results.

It is very difficult to think that you can slice one vegetable and make it be a substantial transformation and perform a similar operation on a different vegetable and get a different result. But these are longstanding rulings that are in part a product of our common law system, that we do not have a simple, clean rule. We have statutes with different interpretations and different meanings and purposes, and sometimes we are forced to live with the results of that legal system, and this is one of them.

I note that, when we were implementing the Government Procurement Code, Chairman Gibbons was concerned about this disparity in rules of origin, and we submitted a report on that. But it is a horribly complex topic. It is one in which, frankly, the United States has been on the receiving end of more complaints than we have been on the giving end of the complaints. And many countries do not view with favor the varying rulings, many of which operate to advantage of U.S. parties.

While there are some exceptions, it is a complicated topic and there are results that in this case, that appear to be minor, but frankly, the only way that anybody can handle an area like this is, when you are making tariff concessions, is to incorporate whatever the existing rules are, and we live by them and seek to encourage their enforcement to the maximum extent that we can, and we apply that same standard to other countries.

If they are trying to manipulate rules of origin to discriminate against our, say, textile exports or something of that sort, we take probably an even stronger position against that kind of manipulation. So this position is really one of principle and also of concern for impairing tariff concessions and subjecting other U.S. exporters to possible retaliation.

Mr. Pease. If the chairman would yield for one observation.

Chairman Gibbons. Yes.

Mr. Pease. I guess what I hear you saying is that on balance the U.S. gains as much as it loses from this complex system, and that to change it in the name of simplicity, which we all cherish, would require a long and difficult international negotiation. Is that a correct summary?

Mr. Hathaway. As a matter of fact, our assessment during the last major round of negotiations in the MTN was that this was a topic that was not beneficial to the United States to open up.

Mr. Pease. Thank you, Mr. Chairman.

Chairman Gibbons. All right. Does anybody else want to talk about adding Canadian water to orange juice——

Mr. Frenzel. I do, Mr. Chairman.

Chairman Gibbons [continuing]. And calling it a Canadian product? That is interesting.

Mr. Frenzel. As you describe the bill, it is simply a reclassification to avoid our obligations under international agreements.

Mr. Hathaway. That is correct.

Mr. Frenzel. And by calling something by another name we are going to unleash the forces of compensation and retaliation, are we?

Mr. Hathaway. That is correct.

Mr. Frenzel. Are we not subject to the same kind of mirror laws being adopted in other countries?

Mr. **Hathaway**. We are certainly subject to other countries, and other countries and governments are subject to the same kind of internal pressures that we are, and there are many instances where other countries have found that a change in a rule of origin would operate to the benefit of their industries and we have complained about it.

Mr. **Frenzel**. Supposing the Europeans were to reclassify the garbage that we ship them from the citrus business which they use in feed? That would be sort of the same thing, would it not?

Mr. **Hathaway**. It would.

Mr. **Frenzel**. If they put it into a classification that costs more money?

Mr. **Hathaway**. That is correct.

Chairman **Gibbons**. That is not garbage. That is feed for cattle.

Mr. **Frenzel**. Excuse me.

Chairman **Gibbons**. In fact, Mr. Frenzel, the protest that I receive all the time is that the Europeans buy so much of it because it is so good for their cattle that there is not enough left for the domestic cattle.

Mr. **Frenzel**. Do you upgrade it by putting coffee grounds in it?

Chairman **Gibbons**. No. This is a very fine product. Some time I will let you come down and sniff a little. Really, it is a very high protein feed supplement. The Europeans love it. They do not protest it.

Mr. **Frenzel**. Except if the Europeans would find it to their advantage to get rid of some of their surpluses in other areas that also are a good cattle feed source, they could very readily, as they have suggested doing to other agricultural products, either put a tax on it or reclassify it.

Chairman **Gibbons**. That would make the American farmer happy, because he constantly complains to me that he cannot get enough of it because the Europeans pay such a good price for it, everybody wants to export it.

Mr. **Frenzel**. Mr. Chairman, this is a duty increase bill. Well, I am sure we will hear some testimony on it. I just wanted to be sure I understood the administration's objection.

Thank you.

Chairman **Gibbons**. Good.

Do you have any other surprises for us?

Mr. **Miller**. Mr. Chairman, the next bill on my list is H.R. 4339, and we have no position on this legislation at this time.

Chairman **Gibbons**. That is the last one.

Mr. **Frenzel**. Do you expect to have a position sometime?

Mr. **Miller**. Yes, Mr. Frenzel. To develop a position on this bill will require some interagency coordination, and as soon as that is completed.

Mr. **Frenzel**. Do you have an estimate of when we might hear?

Mr. **Miller**. I am sure that it will not be this week.

Mr. **Frenzel**. Is it a recent introduction? I am told that it is.

Mr. **Miller**. Yes.

Mr. **Frenzel**. Fine. You obviously do need some time on that.

Chairman **Gibbons**. All right. Does that complete all the administration's testimony?

Mr. MILLER. Mr. Chairman, we have two more bills. Then I would like to return to the three agricultural bills.

Chairman GIBBONS. Go right ahead.

Mr. MILLER. We have H.R. 3795, the Wine Equity Act, and Mr. Hathaway from the Trade Representative's Office will address that.

Chairman GIBBONS. All right.

Mr. HATHAWAY. Mr. Chairman, I have a statement that I would like to submit for the record.

Chairman GIBBONS. We will put the entire statement in the record.

[The prepared statement of Mr. Hathaway follows:]

STATEMENT OF C. MICHAEL HATHAWAY, DEPUTY GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

The Administration is concerned over impediments to foreign market access for U.S. wine exports. We have been aggressively attempting to dismantle foreign barriers to wine and other alcoholic beverage exports, pursuant to Section 854 of the Trade Act of 1979.

The Administration strongly opposes the passage of this bill. H.R. 3795 will not help to reduce foreign barriers to our wine exports. To the contrary, it will probably result in the creation of new impediments to U.S. wine imports and create additional friction between the United States and its major trading partners.

The two most important current problems of the U.S. wine industry are not addressed by H.R. 3795, and are as follows: (1) The recent U.S. economic recession—contrary to popular belief, poor economic conditions did not result in any meaningful increase in per capita wine consumption. In fact, consumption actually declined somewhat from 1981 to 1982. (2) An increase in the value of the U.S. dollar since early 1981 vis-a-vis the currencies of the major wine producing nations. This has made wine imports cheaper and our wine exports more expensive. Consequently, U.S. wines are less competitive both at home and abroad. These problems are, of course, no different from those faced by many other industries.

We have been sensitive to the need to reduce foreign trade barriers to our wine, if we are to increase exports. During the past few years, the Administration has made a number of efforts to identify and reduce foreign barriers to U.S. alcoholic beverage exports, as is already required by Section 854 of the Trade Agreements Act of 1979. In December 1981, the President submitted a comprehensive report to the Congress identifying foreign barriers to U.S. wine exports as well as foreign market potential for these exports. The report generally concluded that in many cases a reduction of foreign obstacles could lead to an increase in U.S. exports of alcoholic beverages. It also concluded that increased industry marketing efforts are necessary to increase foreign sales.

We have been been making vigorous efforts to increase foreign market access for our wine exports. However, we have been hampered by the lack of tariff negotiating authority. Nonetheless, we are pressing Japan to reduce its high tariff on U.S. wines (55 percent ad valorem) and to simplify its two-tiered internal wine tax system, as well as to provide concessions on other alcoholic beverages. Ambassadors Brock and Smith have personally raised this issue at the highest levels of the Japanese Government in the context of overall discussions to improve Japanese market access for U.S. products. A small step was taken in September, 1983, when Japan agreed to accept U.S. certificates of conformity to Japanese wine product standards.

The EC, however, represents perhaps our greatest foreign sales potential. In July 1983, the Administration finalized an accord with the EC on regulatory barriers to wine trade. The accord substantially harmonizes the technical aspects of U.S. and EC wine making practices, thereby ensuring U.S. wines access to the EC market. Prior to this accord, the EC provided a temporary derogation from its regulatory requirements for U.S. wines pending the outcome of bilateral discussions. During this time, several U.S. wine producers were successful in establishing a market for their products in EC countries, particularly the United Kingdom.

H.R. 3795 will not help us to make progress in reducing foreign barriers since the bill is not aimed at expanding U.S. wine exports, as it states, but rather is intended to restrict wine imports. From past consultations with the industry, we have determined that the best potential foreign markets for U.S. wines are Japan, Canada, and the non-wine producing countries of the EC. Retaliatory action under Section 4(b) would have little or no impact on Japan and Canada since they export virtually no wine to the United States. Such action provides them no incentive to improve market access for U.S. wines. In the case of the EC, which accounts for about 85 percent of U.S. wine imports, the bill sets conditions that would be politically difficult, if not impossible, for the EC to meet. The EC would be unlikely to respond favorably to a U.S. demand for unilateral EC trade concessions, which are called for by H.R. 3795, since we do not have authority to negotiate on tariffs. Consequently, we would be required by law to retaliate against the EC.

Increasing U.S. barriers to wine imports has a number of implications. First, as the results of past trade negotiations, the United States has agreed to maintain its current tariff levels for wine in return for reciprocal EC concessions of benefit to other products the U.S. exports. These commitments were made long before the U.S. wine industry had matured to its present stage. Incidentally, the first of our duty concessions on wine goes back to a 1936 agreement with France. If the United States were to unilaterally raise its duties for wine, the largest EC agricultural exports to the United States, the EC could invoke its GATT rights and retaliate against U.S. exports of other products, such as corn gluten and soybeans. Second, Section 4(b) of H.R. 3795 requires the President to impose different tariff and non-tariff barriers on wine imports from different sources, which is a violation of U.S. obligations under GATT Article I. Third, we are concerned that retaliatory action against the EC under H.R. 3795 could unravel our recently concluded regulatory accord, thereby closing the EC market to now established U.S. wine products. Forth, an increase in U.S. import barriers would result in higher prices for U.S. wine consumers and would reduce consumer choice in the marketplace.

The Administration has consistently opposed legislation mandating bilateral or sectoral reciprocity such as that envisaged by this bill. If the principle of sectoral reciprocity were to become a guiding principle in international trade and trading nations aimed at balancing benefits on a sectoral basis, we believe the result would be to restrict trade, rather than expand it, particularly if importing countries adopted differential treatment depending on the source of imports.

The United States has traditionally followed a policy of overall reciprocity in negotiating reductions to barriers to international trade. It is for this reason that the Administration supports in principle H.R. 1571, the Reciprocal Trade and Investment Act of 1983, a general, rather than sectoral, reciprocity bill, which includes a provision granting the Executive Branch tariff negotiating authority. If H.R. 1571 is passed by the Congress, the Administration would intend to use a part of this authority to try to liberalize foreign barriers to U.S. alcoholic beverage exports.

The overall reciprocity approach, which makes equity in our trade relationships a goal of U.S. policy, has been an essential feature of our participation in successive rounds of multilateral trade negotiations. Our aim has always been to secure fair and equitable market opportunities for U.S. exports. In an increasingly interdependent world, U.S. economic prosperity is dependent on an open and healthy trading system. Millions of American jobs are export-related. In 1980, U.S. exports of goods and services accounted for 12.9 percent of our gross national product, compared to 6.6 percent in 1970. Between 1977 and 1980, 79 percent of all new manufacturing jobs were export-related. Two of every five acres of harvested U.S. cropland produce is for the export market.

The diversity in resources and production possibilities among nations encourages them to specialize. The result means that trade negotiations generally cross sectoral lines in order to bring about overall reciprocity, and to improve access for products in which we specialize, such as agricultural exports. Imposing barriers to another country's exports in related or unrelated sectors could lead to a major unravelling of trade concessions, damaging U.S. exporters' access to specific markets.

Chairman GIBBONS. Are you for or against Mr. Coelho's bill?

Mr. HATHAWAY. We are opposed to the bill.

Chairman GIBBONS. All of it?

Mr. HATHAWAY. All of it, and very strongly so. This particular bill is another example of what we have been referring to for the past year as a sectoral reciprocity bill. It is a bill to which a sensible answer is given in this committee by Mr. Frenzel, Mr. Jones, and others' bill on the Trade Reciprocity Act. That bill provides for across-the-board reciprocity and not a product-by-product or a sector-by-sector balancing and imposing of barriers in response to barriers in the same product from the same country.

We have consistently opposed sectoral reciprocity bills because they just do not make sense as a way of operating a trade policy. Even in this bill on wine it does not make sense, and a couple of examples of that make this very, very clear.

We have a very significant amount of wine exports to Canada, insignificant imports from Canada. It is not going to give us one bit of leverage to impose a tit for tat on Canadian wine imports.

Or, for that matter, for another country with whom we are making a very strong effort to get a duty reduction and more market access for U.S. wine products, and that is Japan. We do not have something that we can gain, from imposing a sectoral retaliation on Japanese tariff barriers to U.S. wine exports, because, frankly, wine is not what Japan is interested in exporting to the United States.

We cannot make a sensible effort to reduce barriers in other countries if we are required to treat them all on a product-by-product or a sector-by-sector basis. If we also have a policy to achieve what appears to be the purpose of the bill—and I should not say we object to the purpose of the bill which is to try to open up foreign markets for U.S. wine exports—we cannot pursue sectoral reciprocity.

The problem is that we gave tariff concessions on wine a long time ago when we were not really producing that much wine. Every country faces similar problems. You try to anticipate which things are going to be of benefit to you when you make a tariff reduction and which things you want when you seek a tariff reduction in other countries.

I suspect there are many in the European Community who would like to rethink what they did a round or two ago on soybeans. It turned out to be a good deal for the United States.

We try to get concessions in areas where we are going to be able to increase our exports. We try to give concessions in areas where we have little or no domestic production. The situation for the wine industry in the United States is that it has a new interest in exports. The practical matter is their exports are still quite small, and it is going to take us some time and some negotiating authority to continue to make inroads in other countries.

But we are making some progress. We are making some progress in Europe and Japan. We made some progress in Canada. But we cannot do it if we have legislation that says, if you do not get product market access for a particular product in a certain amount of time you are required to impose equivalent barriers. That is something with which we just cannot run a trade policy. We cannot draw the line on wine exports and wine imports and say, we can accept a sectoral reciprocity bill for wine and not accept it for other commodities or other manufactured products.

What you would end up with is taking our finger out of the hole in the dam here and having a flood of sectoral reciprocity bills. We would in the end be required to balance trade with each country on each product. The long and short of it is we would have less trade in the United States instead of more trade, at a time when, frankly, I think we cannot afford to be putting up barriers to U.S. exports.

In the last decade—I will share this with you and then I will stop—in the last decade the percent of our gross national product that was accounted for by exports doubled. It is now around 13 percent or above that. And in the last years of the seventies, from 1977 to 1980, almost 80 percent of all new manufacturing jobs in the United States were related to exports.

We cannot expect that our trade is going to be able to be inward-looking, balanced on a sector-by-sector basis, imposing import barriers and still continue to expand markets abroad.

We had, back during the MTN, and in the agricultural sector I remember in the testimony we referred to one out of every three acres of agricultural production in the United States went for exports. It is now two of every five, and it will probably continue to grow.

But we cannot go along setting up barriers on products which other countries export to us and not be able to make trade reciprocal, which is something this administration and probably every administration is going to support, if we are doing it on a product-by-product basis.

Mr. **Schulze**. Mr. Chairman, may I just say as a matter of observation, I am impressed with the list of sponsors of this legislation, although I am not one of them. I think what you are seeing here is an emotional response to the feeling that we have eliminated many of our barriers and see an absolute lack of cooperation on the part of some of our trading partners, probably mainly France and Italy.

And this type of legislation is precursing an entirely new and dramatic round of protectionism. This is emotional legislation. It is saying, we have been dealt with relatively unfairly and we are going to equalize it; whether the administration is, whether the Departments are or not, Congress is going to deal with this.

And I think that you had better spread the word and tell them in France and Italy and other places that if they do not shape up and open their markets a little bit more and reduce some of their tariff barriers that this kind of thing is going to go through.

I do not think many of the people that have cosponsored this feel that this is protectionist or detrimental at all. They feel that what they are seeking is equity and this is the way you get it. And I think you had better realize it and realize it soon. This kind of thing is going to happen and, if it does not, instead of dealing with it on a sector basis you are going to have the entire trade laws changed so that you have no choice on how to deal with it. We are going to be more protectionist.

Chairman **Gibbons**. Are there other observations on the wine bill?

Mr. **Pease**. Mr. Chairman.

Chairman **Gibbons**. Yes, sir.

Mr. **Pease**. Mr. Chairman. Mr. Hathaway, I also am not a sponsor of this bill, although I appear to be in the distinct minority among Members of Congress in not being a sponsor. But I am interested in asking a couple of questions.

In Ambassador Brock's letter to the chairman of this committee he states that the section 854 report to Congress sets out the problem and actions to be taken by the administration. Since the one claimed result, the EEC technical agreement of July 1983, actually came about at the conclusion of talks begun in 1974, what actions are proposed by the administration to open access to foreign wine markets?

Mr. HATHAWAY. Just very recently, both Ambassador Brock and Ambassador Smith have made representations to the highest levels of the Japanese Government for reductions on the very high import duties for wine in Japan. That is a market of interest to us.

We have, by threatening retaliation, prevented discriminatory actions by provincial liquor boards in Canada, from imposing additional barriers to U.S. wine exports.

This is a topic and a subject which, frankly, there have not been—and that is probably the reason, as Mr. Schulze said, the reason we are seeing the legislation—there has not been as much progress as we would like to have seen.

But it is not something in which there is not an effort being made. We do not disagree with—in fact, we appreciate—the extra pressure that concerns and interest by the Congress have in being able to get the attention of other countries to be able to deal with this kind of a problem and with sectoral problems.

The only problem we have with the bill is, because of the diversity of international trade, it just does not make sense to be balancing product trade with each particular country. This would not be leverage for us with Canada. We would have to use other products of interest to Canada to be able to do something on access for wine. It is a very difficult balancing process to go through to figure out exactly what things you are willing to sacrifice or threaten or make concessions on in order to get increased market access abroad.

But we have legislatively most of what is needed. The reciprocity bill that this committee has acted upon favorably would provide appropriate means to increase the reciprocity in our trade.

I guess a short answer to your question is there have been efforts made, there have been successes. There obviously have not been enough that those interested in exporting U.S. wine find themselves in the enviable position of not having any barriers in other countries.

Mr. PEASE. You mentioned this issue in terms of the Canadians. What about the Japanese? What have been your successes with the Japanese?

Mr. HATHAWAY. Frankly the only marked success or specific success with Japan was an agreement on accepting U.S. certificates of conformity with Japanese wine product standards. And as you know, in Japan there are in many instances a confusing array of barriers to our exports. We are just chipping away at those.

They also have a very high tariff, but that is something that is a product of negotiations which the United States entered into with Japan and with other countries, and the relative level of tariffs is something that has been an agreed upon tradeoff in concessions. We received concessions in other areas when they were of more importance to us than wine, because we were not exporting wine.

Mr. PEASE. Just for the record, can you tell us what the tariff is on wine going into Japan?

Mr. **Hathaway**. 55 percent.

Mr. **Pease**. And it is not a percentage—that is per bottle or per gallon or whatever?

Chairman **Gibbons**. What is our duty on saki?

Mr. **Hathaway**. It is 37 cents a gallon, Mr. Pease. It works out to be substantially less of a tariff barrier in the United States. In Japan it is relatively high.

Mr. **Pease**. That would be what, in the neighborhood of 10 percent? That 37 cents would work out to 10 percent?

Mr. **Webb**. Mr. Pease, we show it ranges from a level of approximately 4 percent ad valorem to a high of 51 percent, but that is for various different categories of products that are subject to the bill.

I am not sure what the direct equivalent is, in your question, to the Japanese tariff. I could not answer that right now.

Mr. **Pease**. The Japanese tariff is a uniform 55 percent across all categories of wine products?

Mr. **Hathaway**. I will have to provide that. I do not have—well, actually I do have it, but it is in the report that we submitted. I will find it for you and supply it for the record.

[The material follows:]

COUNTRY: JAPAN.—TYPE OF BEVERAGE: WINE

TARIFFS AND TAXES

Tariffs.—The tariff on table wine in containers exceeding 150 liters in ¥160 per liter ($2.91 per gallon). The tariff on table wine in containers not exceeding 150 liters is ¥183 per liter ($5.22 gallon). The tariff on sparkling wine/champagne is ¥455 per liter ($8.27 per gallon).

Average *ad valorem* equivalent Japanese duty is 55%.

Taxes.—There is a liquor tax of 50 percent of the sum of the C.I.F. value plus duty when this sum is greater than $15.81 per gallon. If it is less than $15.81, the tax is ¥44.90 per liter ($.82 per gallon).

Exchange Rate.—$1 equals 208 yen (January, 1981).

NONTARIFF MEASURES

a. Label Requirements: The following information is required to be shown on the label: kind or article of liquor, class or grade, alcohol strength, contents of the bottle, whether it is sparkling, the ad valorem tax if applicable, the name and address of the domestic manufacturer or importer, the address of the manufacturer's or importer's depot, and customs approval number.

b. Certification/Documentation: Customs requires a special technical analysis that includes the following information: alcoholic content; extract percentage; total SO_2 content and method of measurement; ascorbic acid content; and any other preservatives used.

Mr. **Pease**. Are the Japanese trying to protect their domestic wine industry?

Mr. **Hathaway**. Yes. They have a small but important group of producers. As with most other countries, it is sometimes the smallest and those in need of the most protection that have a substantial voice in their system. They have managed, through a combination of a lack of interest on the part of others and an interest on their part in providing protection, not against the United States but against other wine exporters, that their duties have remained high.

And as I said, it has only been recently that U.S. wine exports have been of concern. And frankly, it takes time and it takes tariff negotiating authority. We do not have authority to make concessions. In fact, we give away things on these duty suspension bills that we may well be able— annually $30, $40, $50 million a year in duty suspensions and temporary reductions or duty elimination bills—which, if we had tariff negotiating authority, we might be able to get something for them.

Mr. PEASE. Well, of course this committee has tried to give you the section 124 negotiating authority back.

Well, I just want to express a little frustration. Every time we run into an industry, you tell us we should not try to solve the problem on a sectoral basis. And I can understand the rationale for that.

But on the other hand, we do not seem to be getting to first base with the Japanese in anything. And I think sooner or later the patience of Americans is going to run out.

Mr. HATHAWAY. I think we got past first base on automobiles.

Mr. PEASE. You mean we held them down to 1.8 million cars next year. That is terrific.

Chairman GIBBONS. Is there any other discussion on this matter?

Mr. FRENZEL. Mr. Chairman, I would like to ask the administration about the problem. What you object to is that it establishes a precedent of direct sectoral reciprocity, which is contrary to the country's trade policy, is that the problem?

Mr. HATHAWAY. Yes, contrary to our interests.

Mr. FRENZEL. But also to our policy?

Mr. HATHAWAY. That is correct.

Mr. FRENZEL. And that as soon as we impose this we get equally obnoxious impositions from our trading partners, which in the long run is going to damage U.S. interests overall.

Mr. HATHAWAY. That is correct.

Mr. FRENZEL. It is true that your 124 authority, which was slightly extended under the Trade Act of 1979, has now expired, is that correct?

Mr. HATHAWAY. That is correct.

Mr. FRENZEL. And despite the subcommittee's best efforts, many of the people who are sponsors of this bill have been able to keep us from extending that authority. That is too bad.

I further understand that in the reciprocity bill which this committee recently passed, in the committee report we asked that you use the authority provided in the bill that we passed to obtain reductions, "reduction or elimination of foreign barriers to U.S. exports of wine and other alcoholic beverages", apparently as mandated under section 854(c) of the Trade Agreements Act of 1979.

What is 854(c)?

Mr. HATHAWAY. That was part of the package that was agreed to in the wine and alcoholic beverage area in the implementation of the MTN. Frankly, we had——

Mr. FRENZEL. Well, as I recall, in that one we had the problem with the United Kingdom.

Mr. HATHAWAY. Yes.

Mr. FRENZEL. And we agreed to accept—or rather, Ambassador Strauss agreed to accept the EC proposal, and in response to that we granted the wine industry certain concessions in this country with respect to paying customs duties. Is that what happened?

Mr. **Hathaway**. This particular provision was the method for assessing excise taxes on distilled spirits and not with respect to wine.

Mr. **Frenzel**. So the industry was given a break on all distilled spirits.

Mr. **Hathaway**. There was a change that operated to the——

Mr. **Frenzel**. Correct, that they were able to pay their excise taxes at a later date, and therefore enjoyed the use of their money for a longer period.

Mr. **Hathaway**. And I might say as well that, in response to or as the quid pro quo for changing this method of assessment, we did receive concessions of a significant interest to U.S. exporters, particularly agricultural exporters to the European Community. It was part of the package, the MTN package of negotiations.

Mr. **Frenzel**. Well, I am inclined to agree with you that if our trading partners were to accept a sectoral reciprocity philosophy that we would be in enormous trouble. I guess one of the things that I think is important around here is that we ought not to pass laws which, if passed in the countries with whom we do business, would hurt us. We ought not to pass them in this country, because we are going to create them just as sure as shooting.

But I must admit that there is an awesome array of talent listed in the sponsors of this bill, and certainly the proponents have done themselves proud in their political organization.

I would yield my time.

Chairman **Gibbons**. There is probably no one at this table who is any more frustrated about the ability to get negotiating authority than I am. I have read all the think articles about sectoral reciprocity and about general reciprocity and about negotiating. And frankly, there is an awful unclear answer out there.

I do not know whether your approach is any better than anybody else's approach in this area. At least that is my personal opinion. It is obvious that a great many Members of Congress want you to approach it on a broader front than we have been approaching it.

If we should pass this bill, would this prohibit you from going, and if we should pass the Jones, Frenzel, Gibbons, and everybody else's general reciprocity bill, would this prohibit you from going ahead on your favorite front, or would this bill enlarge your ability to go ahead and negotiate?

Mr. **Hathaway**. This bill would constrain us into imposing barriers to match those that we found in other countries.

Chairman **Gibbons**. Is there any way this bill could be redrafted so as to not tie your hands, but to give you additional tools with which to negotiate?

Mr. **Hathaway**. If it were redrafted with negotiating objectives, frankly, that were parallel to what you have in the general reciprocity bill, without requiring sectoral reciprocity, but a negotiating mandate or more of an emphasis on this particular sector—which I have to say the reason that I think that, it is obviously already in the report language for your other bill. We have a provision in section 854 of the Trade Agreements Act of 1979 that deals with this sector.

It could be made into something that was a general reciprocity bill that was consistent with what the administration could support. But in effect, then, you would have Mr. Frenzel and Mr. Gibbons' bill.

Chairman GIBBONS. I understand that. Let me ask. Would you object to us giving you not only general reciprocity authority, but also give you an additional tool with which you could work which would allow you, after you had perhaps used your general authority, to come in and get these additional negotiating tools?

Mr. HATHAWAY. The President has the authority now, it has been given to him, the authority to respond to unfair practices. But the administration has consistently opposed anything that would move us in the direction of this product-by-product or sector-by-sector reciprocity.

Chairman GIBBONS. I know you have done that. You do not need to repeat it over and over again. Since you are repeating, I will repeat. I am not sure you are right. I am not sure that you do not need a more flexible approach to negotiating than you have taken.

It seems to me that your approach to negotiating—and this is not just this administration, but other administrations—is rather doctrinaire. You say, if we cannot get it all and do everything we want, then we are not going to do anything. That is the impression I get. You have got a blind spot when it comes to any kind of sectoral approach.

Going all the way back into the early seventies, we have had a substantial number of people in Congress. I remember Mr. Karth and several others who were experienced and expert negotiators who said: We do need more tools. Some nuts and bolts cannot be cracked unless you put a little extra force on them.

You have always beem opposed to us giving you that authority. Am I wrong in my impression?

Mr. HATHAWAY. One impression that I think you have which is incorrect, and that is that there is an opposition to conducting sectoral negotiations. If there is general authority and if a particular problem can be solved with a country on a sectoral basis, neither this administration nor any other that I am aware of has ever been opposed to negotiating on that basis.

As a matter of fact, even broad negotiations are always conducted, when you break them down on a small sectoral basis.

Chairman GIBBONS. Yes, that is what I have noticed.

Mr. HATHAWAY. What we object to is provisions that, frankly, can be easily disguised into getting at a result which is just providing protection in the domestic market, without any real leverage for opening up foreign markets. But if we are not required to set up some criteria for a particular product either multilaterally or a particular product with a particular country, we may well end up in a situation where we could not get access to all countries for a product, like the U.S. wine, but we might be able to get access for wine in some countries, for soybeans in others, or we might be able to get access for specialty steel, or we might be able to get access for other products of interest in a particular country. We might find it in our best interest to get access for wine in exchange for access to clock radios.

We might be able to find those deals on a broader basis. If the sectoral arrangement is possible or a product arrangement is possible, those have been conducted and concluded.

What you end up with from legislation that sets up a standard for a product-by-product thing is that they set up a standard that says, unless you get access for our particular product in that particular country, then we are going to impose an equivalent import barrier, and so what you have is not an encouragement for opening markets and expanding trade. What you end up with is an encouragement for freezing the U.S. market for many imports in that particular sector, and that is what we are opposed to.

Chairman GIBBONS. Let us just take wine negotiations as an example. If you negotiate on wine with Canada, obviously they do not grow a lot of grapes there. The climate is not very well suited, nor the soil, nor anything else. At least, I am not aware of significant grape imports from Canada.

But, if you negotiate with the French you have an entirely different proposition. One, the Canadians do not export much wine to us; and two, the French export a lot of wine to us. So, you may want to use a different technique on each negotiation.

What I see you saying—and perhaps I am wrong—is say: We have a doctrinaire approach; unless we can do everything on a broad basis, we do not want to do anything. And the Congress keeps coming back to you and saying: Take this, take another tool to negotiate with. You may want to use a different negotiating technique against the French on wine than you do against the Canadians on wine.

Why do you all always object to that?

Mr. HATHAWAY. I do not think we do. In fact, that is in support of the reason for broader negotiating authority. We may have to use different bargaining chips and different approaches with different countries, because our trade bilaterally or on a product-by-product basis is just too diverse with other countries to be required to go around setting up the equivalent barriers.

It is a very slippery slope to start setting up trade barriers in response to other people's barriers, when in fact our major negotiating efforts have been to try to get other countries to reduce their barriers. There comes a time when you have to respond or you have to retaliate, but we do not want to be put in a position where we are set up in a situation with specific criteria and required to set up a lot of—to start, in fact, a round of increasing trade barriers.

Chairman GIBBONS. What I understand that you are saying to me, is that Mr. Coelho's bill can perhaps be modified to some extent that would be acceptable to you?

Mr. HATHAWAY. I believe it could be.

Chairman GIBBONS. Let us work on a solution to that problem. There are an awful lot of Members of Congress who want to see something done about this, and I would appreciate your putting your good mind to that find a solution.

Mr. HATHAWAY. I will.

And if I could add, Mr. Chairman, one thing: That this particular kind of problem is addressed in the reciprocity bill that this committee has worked on in terms of setting up an analysis of barriers to trade.

And the reason you see a lot of sectoral bills, frankly, and product-by-product bills, what each of these individual industries wants is to have their product up at the top of the list when Ambassador Brock or the President or Members of Congress go around to other countries and they say: "Well, what kind of liberalization do you really want from us first? You are not going to get it all today. You are going to give us a little bit and we will give you a little bit."

And what they want is to adjust the priorities. And what you have in Mr. Frenzel's reciprocity bill is a process for analyzing those barriers and consulting with the Congress and the private sector and trying to establish some trade priorities. And that is something that I think is a very useful provision in the reciprocity bill, and one which will help us get a better handle on which things are really of importance to us, so we make sure that we are putting at the top of the list those things that will be of most interest and in the best interest of the United States.

That is what these bills I think attempt to address, too. And you cannot really object to it. It is in those industries' interest to do that, to promote their—to try to put their priorities—or their product at the top of the list of priorities.

Mr. SCHULZE. Mr. Chairman, may I comment?

Chairman GIBBONS. Go ahead, Mr. Schulze.

Mr. SCHULZE. For a long time I have been agreeing very strongly with what you have been propounding. But what I see increasingly are tradeoffs between basic industries and the agricultural sector in trade negotiations in our country. And what I see happening is a tremendous confrontation coming between the industrial sector and the agricultural sector in our economy, and nobody is going to benefit from that.

Perhaps sectoral reciprocity is a way in which that can be avoided, because if we trade off large sales of soybeans or wheat and then we say we do not care where you get the currency to pay for it, so you dump steel in order to pay for the agricultural product, we are pitting our industrial portion of our society against the agricultural society.

I see that happening more and more, and perhaps sectoral reciprocity is a way we can avoid pitting them against one another. That is something that in negotiations you had better keep in mind, because we are ending up with some tradeoffs which are not beneficial. And perhaps if this brings about some sort of retaliation it would be against the agricultural sector and not against the industrial portion, and that might send a good message all the way around.

So I think I am increasing my support for this legislation as the dialog continues. And I thank you.

Chairman GIBBONS. Does anybody else want to talk about wine with the administration?

Mr. Pease, do you want to go back to another bill, the fluorspar bill?

Mr. PEASE. Mr. Chairman, I am sorry that I was late coming to the meeting. I would appreciate it if the administration would just summarize its testimony regarding H.R. 2947, the suspension of the fluorspar duties.

Mr. MILLER. Mr. Pease, the position of the administration on that legislation was that we would oppose the bill as written, but we would have no objection to a duty suspension on metallurgical-grade fluorspar which is needed by our steel industry. We were objecting to the part of the current proposal which would suspend the duty on the acid grade of fluorspar.

Mr. **Pease**. OK. Thank you very much. I appreciate that.

Chairman **Gibbons**. All right. Are there any other questions of the administration? Are we through with you yet?

Mr. **Miller**. Not quite, sir. We have H.R. 4316 by Mr. Frenzel, and we have no objection.

Mr. **Frenzel**. I cannot believe it. What was that number? [Laughter.]

Chairman **Gibbons**. H.R. 4316, on page 5.

Mr. **Frenzel**. Perhaps I had better read it.

Chairman **Gibbons**. All right. Now back to the three agricultural bills.

Mr. **Miller**. Right. We have three agricultural bills, H.R. 3727——

Chairman **Gibbons**. That is the sugar bill?

Mr. **Miller**. [continuing]. H.R. 4255, and H.R. 4321. And we have Mr. Missiaen from the Department of Agriculture here to address these bills.

Chairman **Gibbons**. Good.

Mr. **Missiaen**. The administration is opposed to enactment of——

Chairman **Gibbons**. You are going to have to get up to the mike.

Mr. **Missiaen**. The administration is opposed to the enactment of H.R. 4255. This bill provides for a lowering of the import duty on fresh asparagus entering the United States.

Chairman **Gibbons**. Oh, we are on asparagus first?

Mr. **Missiaen**. Right.

Chairman **Gibbons**. OK.

Mr. **Missiaen**. This bill provides for a lowering of the import duty on fresh asparagus entering the United States between September 15 and November 15 of any year from 25 to 5 percent ad valorem.

Chairman **Gibbons**. Mr. Frenzel, this is your bill and they are opposed to it.

Mr. **Frenzel**. I understand that, Mr. Chairman. I cannot understand why the rogues would do so. [Laughter.]

Mr. **Missiaen**. If the asparagus arrives by air, the duty goes down.

The current tariff on fresh asparagus does not appear to be a hindrance to trade. The U.S. imports of fresh asparagus have increased every year since 1979. Imports in January to September 1983, the first 9 months of this year, surpassed imports for the entire year of 1982 and were 90 percent more than the imports for all of the year 1981. Most of these imports come from Mexico, but imports from other countries which mostly arrive by air have also increased. They are small, but have increased at a more rapid rate than other imports.

Most U.S. asparagus is not marketed during this period of the year, September 15 to November 15, although an increasing amount is being planted for harvest at this time. The lower duty imports would compete with these early season marketings from the United States and they would also compete with U.S.-processed asparagus, which has most of the market for asparagus during this period of time.

Chairman GIBBONS. Let me ask you a question. Is Mr. Frenzel's bill directed toward that delicious white asparagus that you can only get in Europe, or is he trying to import that old green stuff?

Mr. MISSIAEN. My understanding is that it is the old green stuff, and it comes mostly from Chile, but some from New Zealand and South Africa.

Mr. FRENZEL. Just because I called that orange stuff garbage? [Laughter.]

Chairman GIBBONS. Well, I was going to say, Bill, if you try to get that delicious white asparagus in here I think I would fall over to help you with this one.

Mr. FRENZEL. Well, that will be my next bill. [Laughter.]

Mr. Chairman, last year we passed a bill for Mr. de la Garza affecting cantaloupes, which was based on the same principle. That is, that at a time when cantaloupes were not harvested in the United States it would be provided that there would be a lowered rate of duty. At that time the administration objected to Mr. de la Garza's bill and we passed it anyway.

May I ask the Department of Agriculture if this bill is any different in principle from that one?

Mr. MISSIAEN. It is different, yes, Mr. Frenzel. There is no processed cantaloupe to compete with the fresh cantaloupe coming in. And also, there is no U.S. production at that time, whereas U.S. production of asparagus in the fall is beginning to increase, although still a very small amount of the total market.

One of the reasons why we have increased production or attempted to produce more asparagus in the fall is because in the main harvest period in the United States in the spring we face very heavy imports from Mexico.

Mr. FRENZEL. I understand that. This, however, applies to a period when you admit our production is very low. It also applies to that which enters the country through the air, which makes it, of course, rather expensive and probably makes the cost of it not competitive or less competitive with U.S. production.

But still, you do not think the American consumer should have the opportunity to enjoy this fresh asparagus, albeit green rather than white, during these several months of the year?

Mr. MISSIAEN. Our point is that, even though the costs of bringing asparagus in by air are very high and that the tariff is relatively high, 25 percent, this asparagus is still competitive because one of the main cost components in producing asparagus is labor. It is a very labor intensive crop, and there is a huge difference between the price paid for labor by our growers and those in South America.

Mr. FRENZEL. Well, I thank you.

Mr. THOMAS. Will the gentleman yield?

Mr. FRENZEL. I do yield.

Mr. THOMAS. I think we have an excellent example here of why we have 341 cosponsors of the Wine Equity Act. We have a situation where you grow fresh asparagus; the United States is so lenient that the market for fresh asparagus is being challenged by outside sources. The industry, while, true, does not grow a lot of fall asparagus now, is attempting to react to the marketplace.

Mr. Hathaway stated earlier that at the time they negotiated away the wine rights there was not much export of wine. So now we have a situation, and I think asparagus is an excellent example, where the market is trying to respond to the fall desire for fresh asparagus. But since the gentleman from Minnesota said it is clear that the producers are not producing very much right now, so let us go ahead and open up the fall market.

And now 5 years from now Mr. Hathaway is going to say: Well, we negotiated away the fall rights in terms of asparagus, which of course we cannot deal with that, and we have got to keep low trade barriers, and so the spring asparagus is attacked, and so now the fresh market is not available any more because of the foreign imports, our canned asparagus are not going to compete with fresh asparagus, and golly, there is nothing we can do about it. But do not tell us to affect directly that product. Instead, leave to us the ability to negotiate so we can continue to put ourselves in the hole and the producer cannot respond to a changing marketplace.

It is true, there is not very much fall asparagus being produced now, but given the situation, with the challenge in the spring asparagus market, we are going to try to produce fall asparagus. But if you trade away that right now, we are not going to be able to produce fall asparagus, just like we cannot sell American wines in foreign markets because of a failure to understand what tomorrow is going to look like.

I thank the gentleman for yielding.

Mr. FRENZEL. I thank the gentleman for his comment.

I have no further questions of the Department.

Chairman GIBBONS. You are opposed to Mr. Frenzel's asparagus bill, is that right?

Mr. MISSIAEN. That is right, we are opposed to it.

Chairman GIBBONS. OK. What else have you got? Carob flour and sugar?

Mr. MISSIAEN. The next bill is H.R. 4321. That is to reinstate the duty on carob flour. We have no objection to that bill.

Chairman GIBBONS. No objection. That is 4321.

Mr. FRENZEL. What bill was that?

Chairman GIBBONS. H.R. 4321.

Mr. FRENZEL. Mr. Chairman, I have a question.

A couple of years ago we passed a carob bill, which this particular bill repeals. At that time, as I recall the Department had no objection to the bill that was passed. Why now do you have no objection to the bill which repeals it?

Mr. MISSIAEN. In the meantime, we have discovered a domestic producer of carob flour. This bill, the repeal of the tariff, has caused an increase in imports and has hurt the domestic producer's ability to compete.

Mr. FRENZEL. Well, the committee report at the time we passed the last bill indicated that the committee was aware of two domestic producers. You were not?

Mr. MISSIAEN. I do not know, sir.

Mr. FRENZEL. I would simply like to suggest that it seems to me there is not any difference. There were two producers known to us at that time and it was known what they could do. It says "two firms which are producing powder, but apparently import a portion of their requirements."

And what we are talking about here, I think, is an operation converting the raw material into powder or flour, are we not?

Mr. **Missiaen**. Our understanding at the time the last bill was passed was that there were no domestic producers of carob flour.

Mr. **Frenzel**. Did you not read our committee report? Why were you denied the information that apparently we had?

Mr. **Missiaen**. Well, apparently we did not read it.

Mr. **Frenzel**. Thank you, Mr. Chairman.

Chairman **Gibbons**. What kind of problem are we going to get in with our trading partners now for reversing our field?

Mr. **Missiaen**. All we are doing on this item, which is not bound, is reinstating the duty that we unilaterally withdrew.

Chairman **Gibbons**. We will not have any trouble with Italy, Portugal, Greece, Spain, and Cyprus?

Mr. **Missiaen**. This was a unilateral action. We did not negotiate this reduction in duties.

Chairman **Gibbons**. OK. Let us move into sugar. You can be brief because I do not think we are going to be able to get to that one today. H.R. 3727.

Mr. **Nuttall**. Thank you, Mr. Chairman.

The administration opposes H.R. 3727, a bill to eliminate the import quotas on sugar. Section 1 of H.R. 3727 would prohibit the President or any other member of the executive branch from imposing an import quota on sugar. It would also repeal any quota in effect on the effective date of the bill. Section 2 of the bill would permit the duty to be raised or lowered. Such an action would give consideration in the U.S. sugar market to domestic producers and materially affect contracting parties to the GATT.

There are several provisions of existing law which would be rendered ineffective by enactment of this bill. Headnote 2, subpart 10(a), schedule 1 of the Tariff Schedules of the United States, which in one form or another has been part of our GATT concessions since 1951, provided for the use of an import quota on sugar on the basis of a U.S. duty on sugar. There have been headnote quotas in effect since the Sugar Act of 1948, as amended, expired in 1974. This authority is currently being implemented through Presidential Proclamation 4941.

Under the International Sugar Agreement, 1977, Implementation Act, the United States is required, in order to carry out its obligation under the International Sugar Agreement, to limit its imports from countries which are not members of the International Sugar Organization. This authority has been delegated to the Office of the U.S. Trade Representative.

Section 22 of the Agricultural Adjustment Act of 1933, as amended, requires the President to impose either an import fee or an import quota whenever imports are or are practically certain to render or tend to render ineffective or materially interfere with a price support program conducted by the Department of Agriculture. This authority is currently being implemented through Presidential Proclamation 4940.

Titles II and III of the Trade Act of 1974, as amended, would also be rendered ineffective with respect to sugar. Titles II and III of the Trade Act of 1974 permit the use of quotas under certain circumstances, such as for import relief or to combat unfair foreign trading practices.

The immediate effect of the elimination of the import quota on sugar would be to expose the Commodity Credit Corporation of the Department of Agriculture in fiscal year 1984 to acquisition of up to 5.7 million tons of sugar, valued at about $2 billion. Since the price support program established in the Agriculture and Food Act of 1981 runs through the 1985 crop, which ends September 30, 1986, there could be continued Government purchases of sugar until that date.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you.

Are there any questions of the administration about sugar?

Mr. FRENZEL. Yes. If you did not have the quota, what would happen to you? Would you have to buy up sugar by the ton?

Mr. NUTTALL. Exactly, Mr. Frenzel.

Mr. FRENZEL. Do you have any idea what it would cost you to buy the sugar?

Mr. NUTTALL. There are about 5.7 million tons produced under the domestic program. Currently, world prices are about half of what we are supporting domestically or half of what the domestic price is, and so we would be forced to acquire all of it.

Mr. FRENZEL. You would have to buy all the domestic production?

Mr. NUTTALL. That would be forfeited.

Mr. FRENZEL. Pardon me?

Mr. NUTTALL. There would be an incentive for the producers to forfeit on loans that we provided, and that could amount to about $2 billion, excluding interest and other charges.

Mr. FRENZEL. Well, if we pass this bill our net cost within a year when it was fully phased in would be in the neighborhood of $2 billion plus interest and carrying charges?

Mr. NUTTALL. I would guess that, because, first of all, the loans do not run the entire fiscal year. They are 6-month loans, so they would have matured at that time and people would be given an incentive to forfeit. They would have an incentive whenever the price domestically went below what we are offering them under loan, and that could easily happen under today's market circumstances.

Mr. FRENZEL. Thank you. It would be a little hard to get this passed the Budget Committee, I guess, despite our enthusiasm for getting rid of quotas.

Chairman GIBBONS. The problem, though, is not so much this bill. The problem is our own domestic agricultural program that supports sugar at such an exorbitant price, is that not it?

Mr. NUTTALL. It is not exorbitant, to the extent that we have not encouraged overproduction. And I think that is important to bear in mind.

Mr. FRENZEL. Wait a minute, though. I have been given a piece of paper here that says the world price is about 8.4 cents a pound and the domestic price is supported at almost 22 cents a pound.

Chairman GIBBONS. That is right.

Mr. **Nuttall**. That is correct, Mr. Frenzel and Mr. Chairman.

Mr. **Frenzel**. That is not exorbitant?

Mr. **Nuttall**. There are a number of factors in the international sugar trade which make the prices that are on those markets not exactly reflective of true market prices. For example, refined sugar will run about 1 or 2 cents above raw sugar prices, and that in fact does not reflect true refining costs. There are subsidies and so on practiced in international markets which make those prices not truly reflective of market prices.

Chairman **Gibbons**. Are you all doing anything to negotiate with these other countries about their sugar subsidies?

Mr. **Nuttall**. No. Right now there are negotiations under the International Sugar agreement over in London, but that is not dealing per se with subsidies.

Chairman **Gibbons**. Do you not think it is about time that you started negotiating with the European Community on sugar subsidies?

Mr. **Nuttall**. A good forum for that would be to get them into the International Sugar Organization. To date they have not joined the International Sugar Agreement, and that is one of the reasons that the agreement has failed to operate effectively.

Mr. **Frenzel**. Mr. Chairman.

Through enforcing the quotas to keep the U.S. price high, are you not keeping it a lot higher than is required under the statute? As I recall, it is about 19 cents, is it not? By enforcing quotas you have got it up to 22 cents.

Mr. **Nuttall**. Right now the domestic prices are running about a half a cent to three-quarters of a cent above the market stabilization price. The market stabilization price is determined by adding on certain charges, like transportation charges and so on, to the loan rate specified in the 1981 farm bill, and this eventually gets us up to 21.1 cents a pound right now as the market stabilization price.

We have been basically running about flat with that price.

Mr. **Frenzel**. I see. So we take the price that is in the law and we have some add-ons for transportation, et cetera?

Mr. **Nuttall**. That is correct.

Mr. **Frenzel**. Thank you.

Chairman **Gibbons**. What is the pleasure of the committee as far as continuing on? We have a vote, right now.

You are through now.

Mr. **Miller**. Thank you, Mr. Chairman.

Chairman **Gibbons**. We will see you soon.

Mr. **Frenzel**. Mr. Chairman, we have a conference at 1 o'clock.

Chairman **Gibbons**. Let me say to those in the audience, obviously we have got a lot of witnesses to hear today and we will try to hear as many of them as possible. I regret that some of you will probably not be heard today. We are trying to straighten out our schedules for the rest of the day.

We are going to take a 30-minute break now, during which we will go over and vote and grab a sandwich. When we come back, we will take up the panels that we have here. We will take up Mr. Coelho's bill first. We have Messrs. Coelho, Matsui, Thomas, Conte, and Horton, and then we have testimony scheduled from the Wine

Institute, grape growers and vintners and the farmers. Then we have testimony scheduled from the beverage importers. Then we will proceed on down the press release and try to get to the ladies and gentlemen as rapidly as possible.

We are going to be interrupted all day today. The ladies' bill is on the agenda over in the House and we are going to have to vote on that. I will do the best I can to get to you as rapidly as possible. I am sorry the discussion has taken so long.

We will be back at 12:30.

[Whereupon, at 12:05 p.m., the subcommittee recessed, to reconvene at 12:30 p.m.]

AFTERNOON SESSION

Chairman GIBBONS. All right. We are here to take up Mr. Coelho's bill, H.R. 3795, and the committee is ready to listen to you.

Mr. Coelho.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman. I appreciate the opportunity to testify. I particularly want to thank my colleagues from California, Mr. Thomas and Mr. Matsui, for their help on the bill, and also our colleagues, Mr. Conte and Mr. Horton and Mr. Rangel, who were supposed to be here this morning. I do not know if they will be joining us later.

I want to stress, Mr. Chairman, that this is not a California bill. Most people when they think of wines think of California wines, unless you happen to be from one of the other States and are involved with the wineries in these other States. But we have some great American wines in a lot of other States, and so this is an issue dealing with American wines as opposed to any particular State.

I would like to just refer to a couple of paragraphs in my statement, Mr. Chairman, and then have the statement inserted in the record.

Chairman GIBBONS. Your entire statement will be included in the record.

Mr. COELHO. Perhaps the best explanation and justification for this legislation is to review the progression of the U.S. wine industry. Throughout the late 1950's and the early 1960's, quality table wines consumed by the average American were often imported wines; in fact, in 1959 wine imports accounted for approximately 60 percent of all the wine consumed in the United States.

At this time domestic wine producers were also facing an additional problem, and that was one of an identity crisis. U.S.-produced wines were considered by many consumers to be within the lower spectrum of quality.

However, over the past 15 to 20 years the wine industry in the United States has changed dramatically. The world wine connoisseur, as well as the typical wine drinker, has seen the quality of the domestic-produced wines significantly improved, and in fact, California wines, of which I am particularly fond, have won outstanding awards in wine competitions throughout the world. World experts agree that wines produced in the United States are equal in quality to wines produced anywhere else in the world.

The U.S. wine producer is not requesting any subsidy or Government-assisted program. They are requesting equity, fairness, and harmony in the wine market.

The domestic wine producer has proved that he can produce some of the finest wines in the world. This quality, combined with an increased consumer demand, should reflect an industry that is growing and increasing its sales.

Unfortunately, the wine producer in the United States has only seen formidable obstacles drawn against him while he is willing to share his own market with other producers.

I strongly urge favorable consideration by the committee and would stress, Mr. Chairman, that all we are asking with this legislation is for fair trade.

I think that if you look at the wine industry, we have people that are aggressive in the marketing of their product. It is just that many nations on this Earth, they do not give us the opportunity to market that product, while we in turn give them total access to our markets. And all we are talking about is a bill that deals with fairness.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

I would like to sincerely thank the House Ways and Means Subcommittee on Trade for holding hearings on this important legislation. As you may know 345 of my House colleagues have joined in cosponsoring H.R. 3795, the Wine Equity Act of 1983.

Perhaps, the best explanation and justification for the need of this legislation is to review the progression of the United States wine industry. Throughout the late 1950's and early 1960's, quality table wines consumed by the average American were often imported wines. In fact in 1959, wine imports accounted for approximately 6% of all of the wine consumed in the United States. At this time, the domestic wine producers were also facing an additional problem of an "identity crisis"—U.S. produced wines were considered by many consumers to be within the lower spectrum of quality.

However, over the past 15 to 20 years the wine industry in the United States has changed dramatically. The world wine connoisseur as well as the typical wine drinker has seen the quality of the domestically produced wines significantly improve. In fact California wines, of which I am particularly fond, have won outstanding awards in wine competitions throughout the world. World experts agree that wines produced in the U.S. are equal in quality to wines produced elsewhere.

When you combine a growth in quality with an increased demand from consumers in domestic as well as foreign markets, the result should be one which reflects a positive image to the American wine industry. Unfortunately, U.S. producers have been unable to trade on a fair and equal basis in many substantial markets because of institutional trade barriers. High tariff and non-tarriff trade barriers have restricted the ability of the U.S. wine producer to compete fairly in foreign markets. This has created a substantial imbalance in trade—an imbalance which did not result from poor marketing, or poor quality, or lack of demand, but instead is the result of U.S. producers not receiving equity in the world wine trade.

As you can see, the quality of U.S. wines has improved, a substantial growth in domestically produced volume has occurred, and foreign and domestic consumer demand has increased. And for these reasons, in the past 20 years the U.S. wine industry has regularly petitioned the government to intercede on its behalf to seek access to foreign markets. The U.S. wine producer has not requested any additional barriers; they have only asked that they be allowed the same access to foreign wine markets which other wine producing countries enjoy in the U.S. The domestic wine industry has also petitioned foreign governments directly and has continually worked through international trade associations to seek more open and equitable markets. This has been a concerted effort by wine producers throughout the nation, not just California producers.

The net result of this joint effort is the export of almost 11 million gallons in 1981. Despite 10 years of hard work by the U.S. wine industry to remove trade barriers and expand sales, exports in 1982 fell to just over nine million gallons in 1982. This can be compared to over 120 million gallons of wine imported into the U.S. in 1982. This significant imbalance of 9 million gallons vs. 120 million gallons can no longer be justified by any foreign wine producing country on the basis of ability of the U.S. to produce a quality product.

Perhaps, examples of the kind of trade barriers facing U.S. producers best exemplify the difficulties facing the winegrape grower: Market conditions are ideal for a number of U.S. wine producers in Japan, but the high Japanese tariff and tax systems, virtually double the price of U.S. wines. The high Japanese tariff of $4.50 a gallon results in creating an impossible sale for most wines. Because of high tariff and therefore the overall increased cost, the Japanese often define wine to be a "luxury" item. This "luxury" definition makes some wines subject to a 50% ad valorem excise tax. By combining this high duty of $4.50 with the price to product a bottle of wine, a $4.00 (retail) bottle of California table wine can end up costing more than $8.00 a bottle. This doesn't even take into account the usual retail markups which occur in any market. Nevertheless, Japanese consumer preference tests show that the consumer demand for a good quality wine is expanding, despite this tremendous pricing obstacle.

Another example is a particular small producer, outside of California, who entered into a one year supply contract with a non-wine producing European Community country importer. While the wine shipments were not great volumes, it was a country with an excellent expanding wine market. When the first shipment arrived at the foreign port, the importing authorities notified the importer and the U.S. producer that additional duties and charges had to be paid over and above what they had been told. These additional charges made the produce non-competitive in the market place. Therefore, the foreign importer immediately cancelled the contract.

Price unpredictability due to currency fluctuations and unknown border transaction barriers, can easily result in making the contract almost impossible to settle. Compound this with contract delays due from the European Community minimum reference price system which is a duty that fluctuates based on any internal community market conditions, and you can easily understand why the American wine producer is rapidly losing his export market.

Mr. Chairman, the U.S. wine producer is not requesting any subsidies or government assisted programs. They are requesting equity, fairness, and harmony in the wine market. The domestic wine producer has proved that he can produce some of the finest wines in the world. This quality, combined with an increased consumer demand should reflect an industry that is growing and increasing sales. Unfortunately, the wine producer in the United States has only seen formidable obstacles drawn against him which he is willing to share his own market with other producers. I strongly urge favorable consideration by the committee on this important legislation to allow the American wine producer the opportunity to compete fairly in the market abroad.

Chairman GIBBONS. Thank you.

We will hear next from Mr. Matsui, and then from Mr. Thomas, and then we will go to questions.

STATEMENT OF HON. ROBERT T. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MATSUI. Thank you very much, Mr. Chairman.

I have a written prepared statement, and I would like to submit that for the record, if I may. And I would also like to thank you and members of your subcommittee for holding these hearings today on H.R. 3795.

We appreciate very much the fact that you have held hearings on this and indicated the interest in this particular bill.

Of course, I want to commend Mr. Coelho for introducing the legislation.

I will not read my statement. I would like to just point out a few items in my statement.

In 1982 alone, foreign imports of wine into the United States totaled $781 million, whereas U.S. wine exports totaled only $38 million, resulting in a trade deficit for 1982 alone of $743 million, which is 2.1 percent of the entire U.S. trade deficit.

Second, I might point out that the tariffs of the United States for foreign wine imported into this country range only from 21 to 37 cents per gallon. However, with respect to our exports to foreign countries, they range much higher than that, including Japan's duty which is $4.80 per gallon. In addition to that, there are a number of nontariff trade barriers to our wines that go into these foreign countries.

Third, I would like to point out that the United States, as Mr. Coelho stated in his opening statement, does not subsidize or give any Government assistance to U.S.-grown wine.

Fourth, and in conclusion, Mr. Chairman, although I think most of us are free traders, I feel that wine, the wine industry in particular, is in a unique situation in the United States today.

As you know, during this century all other countries were able to grow and actually produce their wine and export it all through the 1900's and beyond, whereas in this country there was a period of time when the wine industry was shut down, and therefore, it was not until really the 1940's that they were able to begin to produce again, and it was not until the 1960's that our wine industry has become viable.

And with that disadvantage we feel now it would be important to bring some equity and a level playing field to our industry as opposed to the rest of the country.

I thank you very much, Mr. Chairman, for allowing me this opportunity to appear before you today.

[The prepared statement follows:]

STATEMENT OF HON. ROBERT T. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, the bill before the Subcommittee on Trade, H.R. 3795, the Wine Equity Act of 1983, attempts to harmonize, reduce and eliminate tariff and nontariff trade barriers which exist in the international wine trade. The bill itself is designed to encourage equity and fairness by guaranteeing that American wines will be admitted into a foreign country on the same fair and equal basis as the wines of that country are admitted into the United States. Despite the fact that American wine has achieved worldwide recognition, the American wine producer seeking to market the product abroad is continually plagued with a maze of restrictive and prohibitive trade barriers. In 1982 alone, foreign wines with a value of $781 million were imported into the United States while the value of U.S. wine exports amounted to only $38 million. This resulted in a trade deficit for wine alone of $743 million or 2.1 percent of the entire trade deficit.

Historically, there has been an imbalance in the international wine trade. This results from the easy accessibility enjoyed by foreign wines in the United States, which is in direct contrast to the export position of the American wine industry. American duties generally range from 21 cents to 37 cents per gallon. This contrasts with the much higher duties imposed by other countries, which range as high as Japan's duty of $4.80 per gallon.

Unlike the wine industry in many foreign nations, the U.S. wine industry receives no government aid or subsidy and the United States imposes no nontariff trade barriers on foreign wines. Foreign wines can move freely within the American market, subject only to the same laws applicable to the American produced wines and to payment of the lowest duties assessed anywhere by a significant wine producing country. This legislation will help to encourage equity within the international wine trade.

Thank you.

Chairman GIBBONS. Thank you.

And Mr. Thomas, and then Mr. Horton.

STATEMENT OF HON. WILLIAM M. THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. THOMAS. Thank you, Mr. Chairman.

I would first ask unanimous consent that my testimony on H.R. 2667, an earlier bill, be submitted for the record.

Chairman GIBBONS. Without objection, so ordered.

[The material follows:]

STATEMENT OF HON. WILLIAM M. THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to testify in support of H.R. 2667, a bill which will suspend, until July 1, 1988, the import duty on yttrium-bearing concentrates, materials and components. I believe H.R. 2667 is important to ensure the continued competitive viability of the U.S. refined yttrium oxide market.

Imported yttrium concentrate is used as feedstock in the refining of yttrium oxide. Yttrium oxide has important classified defense-related applications, as well as a wide range of commercial uses. Commercial products include lasers, refractory insulating materials, strategic superalloys, energy-saving flourescent lights and components for color television sets.

There are no domestic sources of yttrium concentrate feedstocks so my bill will not impact that segment of the industry. Even though U.S. refiners will continue to depend on imported yttrium as a feedstock, we must continue to encourage domestic refining because of yttrium's significant defense related applications and its necessary commercial uses. If companies cannot profit from refining yttrium, we risk losing our domestic refining capability and a small number of highly skilled jobs.

Currently, the U.S. imposes a 6.3 percent duty on yttrium concentrates. In the U.S. today there are two U.S. refiners that are dependent on the imported yttrium for feedstock in their facilities. These refiners face a competitive disadvantage with foreign refiners who have access to duty-free feedstocks. My bill addresses this problem by relieving the financial burden imposed by the U.S. import duty. Major foreign competitors are the Japanese, French and Norwegians. These companies, some of which are owned in part, by their respective governments, are able to purchase yttrium concentrates, refine it into pure yttrium oxide and export it to the U.S. at a much lower price than U.S. refiners. Production cost margins are so narrow that removal of the import duty will restore the U.S.'s competitive position. In the past decade, two yttrium refiners have permanently closed. Only two remain: Molycorp, Inc., a wholly owned subsidiary of the Union Oil Company of California; and the Research Chemicals Division of the Nucor Corporation in Phoenix, Arizona. We must not lose these two remaining refiners.

The International Trade Commission has reviewed H.R. 2667 and supplied Congress with an objective analysis of the domestic yttrium market. They confirm that U.S. refiners depend on imports of foreign yttrium concentrate to maintain refining capability. To my knowledge, the bill is non-controversial and the Administration does not object. The estimated amount of duty paid by the two U.S. processors of yttrium is under $100,000 per year.

Mr. Chairman, in order to allow a fair competitive position for our domestic yttrium market, it is important to allow non-dutiable access to yttrium feedstocks. I urge the Committee to favorably report H.R. 2667.

Mr. THOMAS. I, too, Mr. Chairman, want to compliment my colleagues for the effort that has been put forth on this particular bill. As was mentioned earlier in the testimony with administration officials, there are an impressive number of Members of the House of

Representatives who have agreed to cosponsor this measure—I believe 341. This is, I believe, a measure of a number of factors.

First, there is no question in my mind, coming from a wine-producing area, but what is needed is really a fair and equal market access. The wine industry in the United States today, and as the gentleman from California, Mr. Coelho, indicated, it is not just a California-producing factor. There are producers all across the United States, and it is becoming far less a regional industry than it was at one time.

But we have about a three-quarters of a billion dollar deficit a year currently, and there is no question that a portion of that can be attributed to the overly strong U.S. dollar. But when you begin to examine the tariff and nontariff barriers against U.S. wines, in addition to an array of Government subsidies to foreign wine producers, and the invasion that foreign nations are making in these markets while effectively sealing off U.S. competition in their own markets, something has to be done.

By a 1981 study conducted by the Office of the U.S. Trade, the Council of Economic Advisers, the Departments of State, Treasury, Commerce, Agriculture, and Labor, the U.S. International Trade Commission, revealed that there are tariff and nontariff barriers to U.S. wine exports that are really nothing short of astonishing in their severity, complexity, and cost.

My colleague from California, Mr. Matsui, indicated the tariff for Japan. I think the United Kingdom is perhaps about the best gross example. It imposes an 81 cent tariff and more than a $15 tax on each gallon of U.S. wine entering the country.

In addition, nontariff barriers hamper the export of U.S. wines. They include certification requirements, license and quota systems, Government or provincial monopolies, process, bottling, and labeling requirements.

The U.S. Department of Agriculture recently completed an exhaustive onsite study of the European wine industry which found that the European Economic Community wine producers are highly and directly subsidized by their governments. The assistance includes preferential credit, low interest loans, grants, payments for distilling surplus wine, help for wine storage, and direct export subsidies, and it results in the European Economic Community countries effectively exporting their surplus.

The Wine Equity Act seeks to remedy the problem by encouraging our wine trade partners to lower or remove trade barriers against our wines. It just seems to me that in the discussion from the administration, as indicated earlier, saying over and over again that we do not want this kind of capability, it seems to me that perhaps in terms of the historic trading posture, for the United States, for the administration to continue to say that they do not want this particular power, that they will oppose this measure. It also seems quite appropriate to me for this Congress to pass this measure.

Over the last several years in meeting with members of the European parliament and trying to get their attention in terms of addressing the real problems that we face in terms of especially agricultural products and specifically specialty agricultural products, with a number of nations but principally the European Community, that talk does not do any good. And we need to send about as clear a message as we can that something needs to be done beyond talking.

And although I agree with the gentleman from Pennsylvania who earlier commented that he thought that the 341 cosponsors were largely emotional in terms of their desire to have action as well, I want to assure the chairman that the vehicle selected for this action is not an emotional one. It was selected very carefully because the impact will be very limited, as the administration testified. There are not that many countries in which we have to concern ourselves with importation of wine. It is not a problem that is worldwide. It is limited in terms of geography, climate, and soil, and it is an appropriate vehicle, in my opinion, to indicate with a clear and direct message that something beyond what has been done recently needs to be done.

The administration argued that sectoral reciprocity would move rapidly across the board. My argument there is that it will not. I think we can select one particular area and send a clear message. And that if there is not a response in other areas, then we can entertain very systematically and very calculatedly, as the Europeans do frequently, item by item.

I happen to think, though, that if the Congress of the United States passes this particular bill, the message will be more than adequately sent.

I thank the chairman and the members for their indulgence.

[The prepared statement follows:]

STATEMENT OF HON. WILLIAM M. THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I would like to thank the members of this subcommittee for the opportunity to discuss with you a foreign trade problem for which the Wine Equity Act, HR 3795, proposes a strong but flexible remedy. A serious imbalance exists between the market access afforded to foreign wines entering the United States and that granted to U.S. wines in foreign markets. What is needed is fair and equal market access to foreign markets for U.S. wine producers.

The U.S. wine industry is plagued by a three-quarters of a billion-dollar annual trade deficit. As with other U.S. exports, part of the deficit may be attributed to the strong U.S. dollar, but the chief factor limiting U.S. wine exports is a grossly unfair system of foreign trade barriers which virtually guarantee that our products can never compete on an equal basis in overseas markets.

The U.S. exported only $38 million in wine last year, while foreign nations exported $781 million in wine to the U.S. Because of numerous tariff and nontariff barriers against U.S. wines, in addition to an array of government subsidies to foreign wine producers, foreign nations are invading U.S. markets while effectively sealing off their own markets from U.S. competition. Foreign wine producers are further aided by our low wine tariffs and by the lack of any nontariff obstacles to wine exports.

A remedy for this imbalance is badley needed, as an abundance of evidence reveals. A 1981 study conducted by the Office of the U.S. Trade; the Council of Economic Advisers; the Departments of the State, Treasury, Commerce, Agriculture and Labor; and the U.S. International Trade Commission Revealed tariff and nontariff barriers to U.S. wine exports that are nothing short of astonishing in their severity, complexity and cost. For example, the United Kingdom imposes an 81-cent tariff and more than a fifteen-dollar tax on each gallon of U.S. wine entering that country. Denmark imposes $8.06 in import taxes per gallon of wine, and Japan's tariffs and taxes add $6.04 to the cost of a ten-dollar gallon of U.S. wine.

Nontariff barriers which hamper U.S. exports of wine include certification requirements (all European Economic Community nations impose certification requirements), license and quota systems (Austria, Switzerland and New Zealand), government or provincial monopolies (Canada and Sweden) and process, bottling and labeling requirements (present to some degree in all producing countries).

The U.S. Department of Agriculture recently completed an exhaustive on-site study of the European wine industry which found that EEC wine producers are highly and directly subsidized by European governments. This assistance, which includes preferential credit, low-interest loans, grants, payments for distilling surplus wine, help for wine storage direct export subsidies, results in EEC countries effectively exporting their surplus. When wine producers are further aided by a gross imbalance of trade restrictions between the U.S. and its competitors, it is easy to see how a three-quarters of a billion dollar wine trade deficit can develop.

In comparison to the trade barriers described above, U.S. tariffs and taxes on a gallon of imported wine average about 55 cents. We impose no nontariff barriers on the entry, distribution or sale of imported wines. Because of this great disparity in market access, I believe that a legislative remedy is needed to encourage other nations to treat our wines more fairly.

The Wine Equity Act seeks to remedy the problem by encouraging our wine trade partners to lower or remove trade barriers against our wines. It does not seek permanent limits, quotas, licensing restrictions, high tariffs or taxes against foreign wine imports. The Wine Equity Act seeks only this: fair market access for U.S. wine producers.

Fair and equal access to foreign markets for U.S. wines would be achieved under the Act by giving the President authority to impose a "mirror image" of trade barriers which foreign nations continue to place against U.S. wines. If, in a six-month period following U.S. requests to a nation to lower its trade barriers against U.S. wines, a nation has not reduced its barriers, the President may order the identical tariffs and nontariff measures to be imposed against the wines of that nation in the U.S. should a nation subsequently lower its wine trade barriers, our government would accordingly lower wine trade barriers to comparable levels.

Thus, the Wine Equity Act would provide our trade negotiators with a powerful bargaining tool for achieving fairer treatment of U.S. wines in foreign markets. This tool is more flexible than the approach of simply walling off our markets. It provides an incentive for nations to lower their trade barriers, rather than erecting an equal but just as damaging permanent barrier against the free flow of goods among nations.

That is an important distinction, because the tendency of players who must compete on a tilted playing field in international trade has been to lock out the competition rather than to try and make the playing field more level. The U.S. has been running uphill for some time now in the area of wine exports, but I believe it is far more prudent to try and make the game fairer than to react by simply stopping the game.

The Wine Equity Act is not protectionist legislation. U.S. wines have achieved a worldwide reputation and need no protection from competition. Instead, the Act seeks only to ensure competition by encouraging equal market access. The Wine Equity Act is not intended to benefit a narrow sector or geographic region of the United States. Fully 39 states now produce wine for commercial consumption, and the 341 cosponsors of this bill represent 49 states.

The Wine Equity Act is intended to correct an all too frequent trade problem which is created when the U.S. opens its markets in an attempt to foster free trade, only to be rebuffed by foreign trade barriers. The Act avoids the traditional U.S. trade posture of asking for concessions and waiting for a response, and it also avoids the reaction of closing off our markets permanently. Under the Act, our trade partners know exactly what will happen if they elect not to reduce their trade barriers, but they will also be rewarded in kind if they choose to cooperate.

Some observers claim incorrectly that the Wine Equity Act is made unnecessary by the bilateral wine agreement signed by the U.S. and the EEC on July 26. I urged that discussions leading to this agreement go forward in the interest of eliminating certain labeling and wine-making obstacles hindering U.S. wine exports to Europe. However, the agreement fails to address tariff barriers, and it does not change the need to gain wine trade concessions from non-EEC countries.

U.S. officials have expressed concern that public pressure for retaliatory trade measures could start the U.S. toward protectionism and away from its historical stance of promoting free trade. In two past addresses to officials of the European Economic Community, I have delivered warnings that America will not sit by forever as our markets are eroded by foreign subsidies and trade barriers. I have warned of political sentiment in favor of locking away U.S. markets from EEC goods, and I have urged the Europeans to reconsider their trade barriers. President Reagan has delivered similar warnings to the Japanese. These warnings and pleadings could continue for many years, but it is action which will cause our trade partners to move toward free trade, and the Wine Equity Act is a means of moving them.

Because the Wine Equity Act seeks to encourage other nations to open their markets to competition, I am pleased that more than three-quarters of the members of this House have elected to support this course of action, rather than a protectionist measure. It is a simple, storing and flexible response to a serious trade problem, and I urge its swift approval by the subcommittee.

Chairman GIBBONS. Thank you.

Mr. Horton.

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HORTON. Thank you, Mr. Chairman, members of the subcommittee.

First of all, I am very proud and happy to be one of the principal sponsors of this bill. It was not until last year that, as a result of redistricting, I obtained new areas in my district that are wine producing, and I will explain how I got involved in this legislation in just a few minutes.

I am happy to join my three colleagues from California in pursuing this bill. I think it is an important bill. I want to certainly subscribe to everything they have said and agree with them and urge the subcommittee to pass this bill as quickly as possible, because as has already been said, there are over 340 members that have signed on to this particular bill.

I represent the wine-producing Finger Lakes region of upstate New York, and I am very excited and yet concerned about the economic impact to this industry in my district and New York State.

American wine producers are not looking to this bill for tariffs, quotas or subsidies for the product they grow, harvest or produce. In fact, by and large they are very confident of the quality of their product and its ability to compete with wines of any country in the world. This is certainly true for wine producers in New York State.

New York is the Nation's second largest wine-producing State with more than 40,000 acres of vineyards in 25 counties, about 70 wineries from Long Island to the western border. New York enjoys a growing reputation for world class quality. Each year New Yorkers harvest more than 150,000 tons of grapes with a market value of $36 million. New York wineries produce nearly 40 million gallons of wine, generate gross sales exceeding $150 million, pay roughly $20 million in Federal and State excise taxes, and attract well over 300,000 tourists to various regions of the State. Since 1976 the number of wineries in our State has more than tripled.

Our wine producers want the opportunity to compete openly and fairly in the international market, but our wines are, in effect, barred from sale in France, Italy and other EEC countries through a complex schedule of tariff and nontariff trade barriers that these countries impose.

The United States, however, imposes virtually no restrictions on wine imported into our country. The result? Last year the United States imported nearly $800 million in foreign wines, and we exported less than $30 million, and most of these wines went to our military bases.

Mr. Chairman, I think it is important for us to look at this. I certainly am for free and open trade, but this February when I was having office hours in a little place called Ovid, N.Y., the president of the State wine grape growers came in to see me and told me about the problems that they have been experiencing with regard to the tariffs in other countries. And the result is that approximately $24 a gallon is charged for our wines and their wines come in here practically duty-free, and the result is that they are just taking our market over.

And I think we ought to recognize that we have got some great wines in the United States, and they ought to have an equal opportunity to be enjoyed by the rest of the world.

One of the little asides I would like to make at this point is that there was a blind testing of Johannesburg Rieslings held last week in New York City at the International Wine Center. Wines from France, Germany, California and New York were tasted, 15 wines in all. Get this: New York wines scored 1 through 5, California was 6, Germany 9, France 10 in the ranking of the top 10 wines, and the benchmark price for the American wines was well below those of the French and Germans.

The point is we have got good wines. We ought to have an opportunity to get this wine into other parts of the United States and also into the rest of the world.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, members of the Subcommittee, I am pleased to be here today to testify in support of the Wine Equity Act. I represent the wine-producing Finger Lakes Region of New York State and am very excited, yet concerned, about the economic impact of this industry on my District and on New York State.

Mr. Chairman, American wine producers aren't looking with this bill for tariffs, quotas or subsidies for the product they grow, harvest and produce. In fact, by and large, they are very confident of the quality of their product and its ability to compete with wines of any country in the world—this is certainly true for wine producers in my State.

New York is the Nation's second largest wine producing State with more than 40,000 acres of vineyards in 25 counties—about 70 wineries from Long Island to the Western border—New York enjoys a growing reputation for world class quality. Each year, New York's vineyardists harvest more than 150,000 tons of grapes with a market value of $36 million. New York wineries produce nearly 40 million gallons of wine, generate gross sales exceeding $150 million, pay roughly $20 million in Federal and State excise taxes, and attract well over 300,000 tourists to various regions of the State. Since 1976, the number of wineries in our State has more than tripled.

New York's wine producers want the opportunity to compete openly and fairly in the international marketplace. We produce outstanding wines, and I would be more than pleased to prove this point by arranging a comparative tasting of New York, California and Foreign wines as a demonstration for you and Members of this Subcommittee. But, our wines are, in effect, barred from sale in France, Italy, and other EEC countries through a complex schedule of tariff and non-tariff trade barriers that these countries impose. The United States, however, imposes virtually no restrictions on wines imported into our country: the result—last year, the United States imported nearly $800 million in foreign wines and exported less than $30 million, and most of these wines went to our military bases.

Mr. Chairman, I am afraid that the wine industry is caught in the cliche-ridden debate that seems to dominate the Halls of Congress these days—"free trade," free trade without imposition of tariffs and quotas, free and open competition. I think we need to look beyond the rhetoric and examine the industry. Such an examination shows that United States wine producers utilize the most modern wine-producing technologies in the world, grow the highest quality vinefera and hybrid grapes, are efficient in their use of labor, and produce quality wines that are beating some of the world's most prominent wines in international tasting competitions. These are the facts, Mr. Chairman.

Mr. Chairman, the Wine Equity Act provides a reasonable time-frame for negotiation of an agreement between the United States, Europe and Japan on a uniform tariff and non-tariff schedule that is fair for all nations. Equality in the international marketplace—that is all we seek with this bill. And the lack of equality is the reason I became an original sponsor of the Act and helped direct the effort to secure more than 340 current House cosponsors—including both New York Senators and all but three of New York's 34 Representatives. I hope this Subcommittee gives our wine industry the opportunity to compete fairly and equitably with all major wine-producing countries by favorably reporting this bill.

Mr. Chairman, once again, I thank you for holding this hearing and for the opportunity to personally express my support for its passage.

As an aside, Mr. Chairman, a blind tasting of Johanesberg Rieslings was held last week in New York City at the International Wine Center. Wines from France, Germany, California, and New York were tasted—fifteen wines in all. New York wines scored one through five, California Six, Germany nine and France ten in the ranking of the top ten wines. And, the benchmark price for the American wines were below those of the French and German.

Chairman GIBBONS. Thank you, Mr. Horton.

Mr. Conte.

STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. CONTE. Thank you, Mr. Chairman. I appreciate this opportunity to testify in support of H.R. 3795, the Wine Equity Act of 1983.

Chairman GIBBONS. Would you push that microphone over?

Mr. CONTE. As one of the principal cosponsors of this measure I want to commend you and the other members of the committee for scheduling these hearings and also for your continuing attention to this most important issue.

Mr. Chairman, my district in western Massachusetts is not a major commercial grape-growing area. In fact, there is no winemaking there. But making wine, particularly within the ethnic communities of that area, is very much a part of the cultural environment in which I grew up. I made much wine as a young boy with my father—we used to make about 150 gallons a year.

I am very proud of that heritage, and therefore very disturbed by the restrictions on American wine producers that have been imposed by foreign countries.

The days when American wines were put down by snobs as inferior to European wines are long gone. American wines are fully capable of holding their own in international competition as long as it is a fair fight. But today that fight is far from fair.

The American winegrower seeking to market his product abroad is continually faced with a maze of restrictive, prohibitive trade barriers, including both tariff and nontariff restrictions.

Mr. Chairman, I want to stress that the objective of the Wine Equity Act is not protection but promotion. We are not seeking to protect the domestic market from foreign competition. The American wine industry is fully prepared to meet competition on its own terms in an American market where everyone plays by the same rules.

The problem is in competing for markets where everyone does not play by the same rules. Overseas the American wine exporter often finds, in addition to significant tariff barriers, a variety of regulatory obstacles to free and fair competition. And those obstacles may include certification requirements, license quota systems, government monopolies at the national, local, or other level, and processing, bottling, and labeling requirements that are not applied to wines produced in that country.

The purpose of the Wine Equity Act is to support American wine exports by permitting them to compete in foreign markets on the same terms that foreign wines are permitted to compete here in the United States.

This legislation would authorize the President to impose certain restrictions on wine imports from countries that do not harmonize their tariff and nontariff trade barriers with those imposed by the United States on imported wine.

It is our hope that these foreign countries will reasonably bring their market systems in line with the open market approach here in the United States. Certainly the existence of this authority should provide a significant incentive for other countries to do so.

Mr. Chairman, I thank you again for this opportunity to share my views with this committee, and strongly urge favorable consideration for this important piece of legislation.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I appreciate having this opportunity to testify in support of H.R. 3795, the Wine Equity Act of 1983. As one of the principal co-sponsors of this measure, I want to commend you and the other members of the Committee for scheduling this hearing, and also for your continuing attention to this important issue.

Mr. Chairman, my district in western Massachusetts is not a major commercial grape growing area. But making wine, particularly within the ethnic communities of that area, is very much a part of the cultural environment in which I grew up. I am very proud of that heritage, and am therefore very disturbed by the restrictions on American wine producers that have been imposed by foreign countries.

The days when American wines were put down by snobs as inferior to European wines are long over. American wines are fully capable of holding their own in international competition—as long as it's a fair fight. But today that fight is far from fair. The American winegrower seeking to market his product abroad is continually faced with a maze of restrictive and prohibitive trade barriers, including both tariff and non-tariff restrictions.

The United States imposes duties on imported wine ranging from approximately twenty-one cents to thirty-seven and one-half cents per gallon. This contrasts with significantly higher duties imposed on American wines by other countries, ranging as high as Japan's duty of $4.80. per gallon.

In addition, and the marked contrast to the wine industries in many other countries, the U.S. wine industry receives no government aid or subsidy, and the United States imposes no non-tariff trade barriers on foreign wines. Foreign wines can move freely within the American market, unlike American wines in other countries.

Mr. Chairman, I was shocked to learn that the United States imported $781 million worth of foreign wines in 1982, while only $38 million worth of U.S. wine was exported. This trade deficit for wine alone amounted to over two percent of the entire national trade deficit. Certainly some of this problem has to do with the current strength of the dollar compared to foreign currencies, which has the effect of making our exports comparatively more expensive in countries with weaker currencies. But a significant aspect of the problem, and the one which the Wine Equity Act seeks to remedy, is a situation in which foreign wines enter the United States comparatively duty-free, while American wine exports face a variety of tariff and non-tariff barriers abroad. This situation is obviously inequitable.

Mr. Chairman, I want to stress that the objective of the Wine Equity Act is not protection, but promotion. We are not seeking to protect the domestic market from foreign competition. The American wine industry is fully prepared to meet the competition on its own terms, in an American market where everyone plays by the same rules.

The problem is in competiting in foreign markets, where everyone does not play by the same rules. Overseas, the American wine exporter often finds, in addition to significant tariff barriers, a variety of regulatory obstacles to free and fair competition. Those obstacles may include certification requirements, license and quota systems, government monopolies at the national, local, or other level, unreasonable customs delays or procedures, reference price systems, and process, bottling and labeling requirements that are not applied to wine produced in that country.

The purpose of the Wine Equity Act is to support American wine exports by permitting them to compete in foreign markets on the same terms that foreign wines are permitted to compete here in the United States. The legislation would authorize the President to impose certain restrictions on wine imports from countries that do not harmonize their tariff and non-tariff trade barriers with those imposed by the United States on imported wine. It is our hope that foreign countries will reasonably bring their market systems in line with the "open market" approach of the United States. Certainly the existence of this authority should provide a significant incentive for other countries to do so.

Mr. Chairman, I thank you again for this opportunity to share my views with the Committee, and strongly urge your favorable consideration of this legislation.

Chairman GIBBONS. I want to thank all five of you for your testimony and tell you that we do take seriously the bill that you have introduced, you and a great many other Members of the House have introduced.

I was not surprised to hear the administration opposed to it because they are always opposed—not just this administration but every administration I have dealt with—to any kind of direct reciprocity type of trade negotiation.

For those who were not here when I was expounding on this subject with the administration, I said that I have read all of the information that has been made available to me about sectoral negotiations versus broad negotiations, and when I look at the trade negotiations that we do, we always get down to sectors anyway.

I thought the wine industry was a unique industry, having been wiped out by prohibition, along with the hard liquor industry, too, but particularly having been wiped out by prohibition, and then an attempt made to reconstitute it following the repeal of prohibition.

I realize that we do not have many bargaining chips when it comes to wine because we probably gave them all away in our attempts to get a legal drink in the early 1930's. I was hoping that we could make something special out of wine in the negotiation.

As you know, we have included that in the general reciprocity bill, with some instructions. I would like to experiment around with these negotiating tools, and I was hoping that perhaps there was some way we could amend your bill and not get a veto out of the administration on it. That is what worries me. Obviously, with this many cosponsors you could override a veto, but I am not sure how many of them would stick with you if the President put his name on the line and vetoed the legislation.

I asked the USTR and the administration to see if there was not some way we could constructively work together and solve this problem.

As I see it, looking at your bill, you do not try to do nearly as much as the administration said that you were trying to do. This calls for the designation of major trading countries in wine, and then it seeks to negotiate with those major trading countries. I would imagine that these would have to be trading countries whose standard of living is somewhere near ours. Obviously, you cannot expect a little old poor nation to spend all of its foreign resources, all of its exchange resources on wine. They probably ought to put some into bread and some into machinery and other things.

So as I read your bill, you are trying to limit it to the major trading partners, and those I would interpret as being trading partners whose economy is on a par with ours and who trade from about the same economic advantage that we do. And then you would try to enter into bilateral or multilateral negotiations with those countries. If they did not succeed in reducing their own wine barriers to parallel our wine barriers, then the President would be authorized to go—you probably said directed—but I would say authorized to go as high as they do in that area.

Now, I realize to some of the purists in negotiations this is not the proper way to negotiate, but I do not know that we have tried it in recent history. And I do not really see any reason why we should not try it.

Mr. COELHO. Mr. Chairman, could I make a couple of comments?

Chairman GIBBONS. Yes.

Mr. COELHO. I would think first off, I would speak for most of my cosponsors, and would say that we would hope that none of the provisions of the bill would have to be implemented.

We are not seeking to force any nation to do anything. The only thing we want is an opportunity to market our product in their country the same way they can market theirs in ours. And we would hope with the adoption of this bill that the message is loud and clear and that they would permit our product to be marketed in their country, and you would not have to do anything. I mean that is really our goal. Our goal is to let the market work. We do not want to interfere. But the market is not able to work because they are trying to restrict it one way, and hopefully we could intervene if it came to that. We would not want to.

But let me go to the first part of your discussion, Mr. Chairman, and just a quick check with my colleagues here. We are prepared to defend the bill if the administration were to veto it and try to override. We are not afraid of that battle. And hopefully, your subcommittee would give us a chance, if you agree with the intent of the bill, to try to put something through.

I think it is a fair bill, it is a decent bill. We are not asking too much. And we should be given a chance to see if we can get it enacted into law. And I do not want to speak for everybody, but I would be prepared to have——

Sil, do you want to say anything?

Mr. CONTE. I am with you a hundred percent. I concur.

Mr. HORTON. I am with you, too. I think we ought to try. It is unfair. The problem is that nobody else seems to recognize it. And we have got a very good wine industry in this country, and we do not have an opportunity to compete.

Mr. COELHO. And I think the thing you should know, Mr. Chairman, is that as California has an established industry and we are still growing—we have an established industry, the thing that I have said to everybody is I have moved around to get coauthors, and I think it is reflective of who is here and who is willing to testify, is that we are not talking about a California industry any more. We are talking about an industry that is nationwide, that the majority of the States in the Union do produce wine now, and in some of the wines in those States, the wineries are young and they are not established yet. But some of the wine in the different States is extremely well established.

New York, while they claim with some of their Chamber of Commerce Congressmen to win some contest once in a while. [Laughter.]

No. New York has some excellent wines, but the State of Washington has some excellent wines. Virginia and Maryland are producing wines. Texas has a winery that is producing and getting going. I could go on, Ohio has one. I mean I could go on and on.

The point is that we are moving this industry at this point, and why should this industry be hampered by unfair restrictions? I mean I think that is all it comes down to.

Chairman GIBBONS. As I said, I am trying to see if there is not some way we can work this out. Have you all ever compiled—and perhaps I ought to ask some of the following witnesses—a list of the trade barriers that other countries have against our wine and compare those with the trade barriers that we have?

Is there any publication?

Mr. COELHO. The witness from the Wine Institute will be prepared to react to that, Mr. Chairman. He does have the list. So we will be supplying that for the record today.

Chairman GIBBONS. Fine. My staff tells me we have a report from the USTR on the issue. What I will be asking is there any great differences between the USTR's compilation and the industry's compilation, because maybe we will be getting down to what is a consensus.

Mr. Frenzel, do you have any questions?

Mr. FRENZEL. I would first like to thank all of the witnesses, including the one who has just left, for their splendid testimony.

I would ask my friend from California, Mr. Thomas, whether this would be a good idea for milk or meat or textiles or rice or cotton, all of which are rather important industries in the United States?

Mr. THOMAS. I would tell my friend from Minnesota that as I have sat and watched the progress under GATT on section 301—and clearly that is facetious—the lack of progress, the inability to get various people around the world focused on what we consider to be the major problems, that I do not think that if you add up all of the sectors, what you have is a general reciprocity bill. I do not think that is what I am supportive of.

I do think, though, that at this stage of the process it would be very useful and instructive to a number of European countries, principally Mediterranean countries, who have succeeded in flooding the U.S. market, that we are serious, and that a single measure moved calculatedly will do more to get them to sit down and get serious about what we are talking about than anything else we can do.

Mr. FRENZEL. So there is a big difference between the wine industry and the dairy industry?

Mr. **Thomas**. I think the wine industry in terms of the number of countries that produce wine are far more limited than the number of countries that produce milk and dairy products. I think that the reaction in terms of the number of our major trading partners would certainly not be as disruptive with wine. I think wine is a really appropriate vehicle for this first step, whereas others, because of their broad consequences, would not be nearly so appropriate.

Mr. **Frenzel**. Is it not true that wine is produced in most of the countries of the world?

Mr. **Thomas**. Wine is produced in most of the countries of the world, but in terms of the chairman's comment, we are talking about countries that are roughly similar to us in terms of desired responses. And I think actually if we examine the number of countries that we are principally concerned about, the list boils itself down to clearly less than half a dozen.

As, for example, if the gentleman will allow me, the administration indicated that with Canada we do not have a significant reciprocity or reciprocal wine trade, and that, therefore, this limited action toward Canada would not be significant.

Mr. **Frenzel**. Well, I thought of paralleling your wine bill with automobiles for Canada. I will have other products for other countries. Your definition, however, is a bit fuzzy, and while you say you would like to nail a couple of Mediterranean countries, it is hard for us to, or at least hard for this Member to see how you do that. You have some kind of substantial test. And certainly we import wine from nearly every country under the Sun. What is substantial?

Mr. **Thomas**. That is, of course, a decision that would be made administratively, but I think if we can give you some figures and you would begin to look at them, I think you can find that there are obvious cutting points between what is substantial and what is not substantial.

Mr. **Frenzel**. Well, is substantial meant to apply to the total volume of trade, the total volume of wine trade, the total volume of trade from a certain country, or which of those?

Mr. **Thomas**. My understanding is that it is the wine trade.

Mr. **Frenzel**. Well, I suspect for a country like Chile or even Hungary wine is a substantial part of their export. But I assume you do not mean that those kinds of countries should be involved, should they?

Mr. **Thomas**. It depends.

Mr. **Frenzel**. That is my problem. If it depends and if we do not know, then I think we have to know.

Mr. **Thomas**. Perhaps their governments are a bit more enlightened than ours, and they see the possibility of expanding industries, and they are not cutting off their export opportunities as we did in the recent past. A good example would be the gentleman from New York's indication that just since 1976 wineries in New York have tripled, and it just seems to me that if this is an expanding and growing industry and one that wants nothing more than competition, because the tripling of those wineries in New York was not done under Government subsidy; they were done under opportunities for competition.

Mr. **Frenzel.** But they have, of course, occurred since the Trade Act of 1979 at which time we allowed the wine industry to pay its excise taxes a good deal more slowly as a consequence of the wine negotiations in the MTN. So certainly they have had a bit of an assist over the previous conditions that existed prior to their growth.

Mr. **Thomas.** And if we examine the assistance that this country has given the industry, it not only pales in comparison, you cannot measure it in terms of the direct subsidy. And I ran through a list of preferential credit, low interest loans, grants, payments for distilling surplus wine, storage, export subsidies—on and on and on, in terms of almost an inexhaustible list of the way in which major European countries have not only exported their subsidies but created a marketplace in which wines from particular countries can be sold on the marketplace in California and New York or in Minneapolis at a price which American growers cannot compete with even in terms of purchasing the bottle, the label and the cork.

Mr. **Frenzel.** Does anybody else on the panel want to tell me why wine is a great deal different than dairy or meat or textiles or the other items?

Mr. **Coelho.** The gentleman from Minnesota, as he well knows, I am heavily involved in the promotion of the dairy industry, as he is. And the big difference between dairy and wine is that the Government is heavily involved in the dairy business, and the Government is not involved in any way in subsidizing or assisting the wine business.

The same thing is true of cotton, the same thing is true of wheat, and I am not sure what other commodities that you mentioned. But all of the commodities that you mentioned to my colleague, Mr. Thomas, are commodities where the Government is heavily involved.

Now, that is one major distinction, but I think the other distinction is that you have a situation where the wine industry; and the consumption of wine is growing rapidly in the United States. We are helping to develop that. Our industry is the one that is developing it. We have some of these countries trying to come in and take advantage of it in a subsidized way. If they want to come in here and they want to compete in the same way that our people are trying to develop their markets and to try to get the consumers of our products, that is fine. But we are not going after that. We are not going after basically their subsidies to their commodities in the United States.

All we are saying is look, if you are going to come into our marketplace and you are going to compete with us in our marketplace, then why do you not just give us a chance in your marketplace, and we do not need the subsidies; we do not need every other little gimmick that you have developed for your products. Just give us a chance to market. That is all we want. We do not want anything else. And that is all we are asking for in here.

That is substantially different than the position taken by the rest of the commodities the gentleman mentioned.

Mr. **Frenzel.** My problem there is that if you have a subsidy problem, you have a trade remedy; and it is probably the most immediate of the trade remedies possible or available to you. And I——

Mr. COELHO. If I can respond to the gentleman, we are pursuing that issue. We are pursuing the remedy for the subsidy. But this issue is not addressing that. This issue is basically access to foreign markets and giving us an opportunity to have that access. That is all we are wanting there. The subsidy thing is being handled through the administrative process, and those will be pursued.

Mr. FRENZEL. Yes. And I assume those will be pursued. I hope they are. And I think that is the subsidy remedy.

It seems to me yet that I fail to see why we should shatter the trade policies which this country feels are in its advantage to go for a direct sectoral reciprocity on one product only. At least, to me—I am a little slower than most members, of course—but I cannot see why wine needs to be singled out as the one sector role item that has to be balanced around the world when we know that there are some things we sell better and some things other folks sell better, and sometimes we negotiate for the things we want, and our partners negotiate for the things they want.

Mr. THOMAS. Will the gentleman yield on that point? If you will find a particular product that is either regional or national that you have as a better candidate, I would be willing to cosponsor a bill with you to send a message on that particular product, if you do not think wine is the best one. If you look for one, I will go with you.

Mr. FRENZEL. Well, I usually use Western Union to send messages and do not mess around with the trade laws.

Mr. Chairman, I am grateful to the witnesses for their presentation. I would yield the balance of my time.

Chairman GIBBONS. Well, as I said, what I am trying to do is to expand our repertoire of remedies. We now seem to be hooked upon an ideological bent that we will only negotiate if we can negotiate everything. And, unfortunately, the Congress does not want to negotiate everything, as I see it. I am sorry they do not.

I was hoping that we could find some ways that we could expand our ability to negotiate, and perhaps we are going to have to modify your bill some. But I would like to try to see if we cannot work out something.

When I was talking with the administration a little earlier today, they seemed to think that there may be something that we could do. I hope that you all will continue that dialog with the administration while we hear from the rest of these witnesses and try to get us together a package of bills.

Mr. HORTON. Could I just add one thing?

Chairman GIBBONS. Yes, Frank.

Mr. HORTON. I think that when you start talking about the overall problems of reciprocity and when you start talking about including all of these other products, you are overlooking the fact that in this particular instance there is practically no duty on any of these wines that are coming in, and it is really harming this industry. And it can have a very vital effect on whether or not this industry continues to grow or whether it does not grow.

And I think that if you start lumping it in with all the other problems that we have got with trade—and I recognize that there are a lot of other problems—but this is a unique situation in which there is no give or take or has not been any give or take as far as this industry is concerned. And so I think it ought to be looked at as a unique situation and one—we are not asking for the moon. We are not asking them to turn over and lay down or anything like that. All we are asking is for equal treatment as far as our wines are concerned, and that is not what is happening. They are flooding us, and they are underselling and everything else when we cannot possibly compete. And we cannot even send ours into these other countries.

So I think we make a mistake if we try to look at the broad picture and solve the broad picture on the back of this wine industry.

Chairman. GIBBONS. There is no doubt in my mind that the wine industry has been overlooked in the negotiations in the past. I never remember a time in which it was even talked about as being one of the negotiating objectives of any of our negotiating rounds. I do know that even in Europe where we negotiate with the European Community, they have had a difficult time with wine.

But, I am not interested in getting caught up in all of the hangups. I want to increase the repertoire of responses that the United States has for different circumstances.

I am hopeful that we can work this out, and I want you to know you have my serious consideration.

Mr. COELHO. Mr. Chairman, we appreciate your consideration very much and those of your colleagues on the subcommittee. I just want you to know that on behalf of most of the cosponsors, we are very serious about this.

Chairman GIBBONS. Yes, I understand that.

Mr. COELHO. We are willing to negotiate with you and to come out with something——

Chairman GIBBONS. Negotiation does not mean delay. I want to assure the gentleman of that. We will take this matter up as fast as we take up all of the other bills. As you can see, it was the first on our agenda today, and we are not trying to do anything that would prevent this type of bill from becoming law.

Mr. COELHO. Thank you, Mr. Chairman.

Chairman GIBBONS. Let us go now to the next set of witnesses, a panel with the Wine Institute, the American Grape Growers Alliance, the Association of American Vintners, and the National Council of Farmer Cooperatives.

Good afternoon, gentlemen. Let me say that, unfortunately, Mr. Frenzel and I have been informed that the full committee on Ways and Means will meet this afternoon at 2:30. I would imagine that this meeting will kill the rest of the afternoon. We will go until 2:30, and then we are going to have to call it quits subject to the call of the Chair.

The witnesses that had planned to testify this afternoon are just going to have to play it by ear. We will get to you as rapidly as we can. Under the rules of the committee, we are required not to meet when the full committee is meeting. Therefore, we cannot meet even though we may wish to meet this afternoon. At 2:30 p.m. we will have to suspend.

The statements of each of you will be placed in the record. I have watched your faces. You have been very patient in listening to us today. If you can summarize your statements, please do so. However, do whatever you wish, and we will go as far as we can. Our first witness is Mr. Silverman.

Mr. SILVERMAN. Mr. Chairman, I come here today frustrated because my voice is a little bit hoarse. I beg your indulgence. Also, I come from an industry that is completely frustrated by what has happened to us in international trade.

I have a longer statement which I have submitted for the record. However, with your consent I would like to read a shorter statement.

Chairman GIBBONS. All right, sir. You go right ahead.

STATEMENT OF ARTHUR H. SILVERMAN, WASHINGTON COUNSEL, WINE INSTITUTE, ACCOMPANIED BY JAMES B. CLAWSON, CONSULTANT

Mr. SILVERMAN. My name is Arthur Silverman. I am Washington counsel for the Wine Institute, the trade association of the California wine producers. We now have 472 member wineries. California-produced wine accounted for 68.6 percent of all wine, and approximately 92 percent of U.S.-produced wine, entering distribution channels in the United States in 1982.

I am accompanied here today by Mr. Clawson——

Mr. FRENZEL. Mr. Chairman, might I ask the witness to speak up just a little bit?

Chairman GIBBONS. He has got a little laryngitis is his problem. We understand him.

Mr. SILVERMAN. I will try and speak louder. My throat is very sore.

Chairman GIBBONS. We are going to get some good microphones one of these days. [Laughter.]

Mr. SILVERMAN. I am accompanied today by Mr. James B. Clawson, who is acting as consultant to the Wine Institute on trade matters.

Mr. Chairman, the wine industry of the United States depends on the American consumer. The industry continually strives to improve its product without an increase in price. It is acknowledged by wine experts worldwide that the quality continues to improve, and California wines, in particular, are as competitive as any found in the fine wineries of Europe.

The U.S. market, as has been alluded to, is an open and growing market. Over the past several years the supply for this increased growth has been provided almost entirely through a rise in inexpensive imports. The domestic industry is not at all interested in controlling imports or in imposing any additional duty that would increase the price in any way to the consumer. Nor do we seek any special treatment, and we receive none, of any kind, in the American market.

On the other hand, Mr. Chairman, a recent study which I would like to introduce into the record concluded by the Department of Agriculture, confirmed that substantial subsidies are being provided by foreign governments to their wine producers. The study looked particularly at Italian producers whose products make up the bulk of U.S. wine imports.

While many U.S. producers and growers are concerned about the unfair trade advantages resulting from the subsidies, the proposed legislation deliberately does not speak to the subsidy question. The purpose of this legislation is not to impose additional duties or erect nontariff barriers to wine entering the United States. The legislation, rather, is solely intended to improve access to foreign markets so that American wines will be admitted into a foreign country on the same fair and equal basis as the wines of that country are admitted into the United States.

Thus, this legislation may be aptly described as an export equity and fairness bill, and that is indeed what we have tried to convey to the Congress.

Wine has been a major commodity of trade since the beginning of time. With the exception of Prohibition, the United States has always imported wine. Domestic producers have historically produced most of the wine consumed in the United States, and as the domestic industry has matured, it has sought to market its products abroad in much the same way as foreign producers have freely marketed their products here.

Historically—and this is the key—historically there has been a substantial imbalance in international wine trade. This results from the easy accessibility enjoyed by foreign wines in the American market, which is in direct contrast to the export position of the U.S. wine industry in virtually every existing or potential foreign wine market.

The United States has the lowest tariff on table wine, the major component in wine trade, of any significant wine-producing country. The United States imposes no nontariff trade obstacles to the entry, distribution, and sale of foreign wines. Foreign wines move freely in our markets, subject only to the same laws and regulations which apply to American wines.

By contrast, however, many other industrialized countries impose duties on American-produced wines at least double that of the United States with some ranging as high as Japan's $4.50 per gallon. In many potential foreign wine markets, nontariff barriers are even more formidable—I should add much more formidable—than tariff barriers.

A study completed by the executive branch of the Government and submitted to the Congress in 1981 substantiated that countries such as Mexico, Brazil, Argentina, and Chile maintain virtual prohibitions to U.S. wines through systems of licensing, testing, quotas, and certification. Other markets such as Canada and the European Economic Community maintain internal regulations such as minimum reference prices, which we find particularly difficult, and product markup systems that discriminate against U.S.-produced wines.

The effect of these foreign tariff and nontariff barriers is reflected in the U.S. trade deficit. For example, in 1982, foreign wines with a value of $781 million were imported into this country, while the value of U.S. wine exports amounted to only $38 million. The result was a trade deficit for wine alone of $743 million, 2.1 percent of the entire U.S. trade deficit.

At this point I would like to point out that while the trade deficit has been obviously exacerbated by the strong dollar, we are historically a much larger percentage of the total trade deficit. In 1981 we were 2.6 percent; in 1980 we were 2.6 percent; in 1979 I believe we were 2.2 percent.

So, while in absolute terms the problem we face has been exacerbated, in relative terms it is a historical problem which others are now beginning to feel.

Over 122 million gallons of imported wine were consumed in the United States in 1982, while merely 9.1 million gallons of U.S. wine were sold to foreign markets, almost half of which went to one country—that was alluded to before—Canada. And there are problems with Canada. But imagine, half of our exports go only to Canada.

For the past 15 years the American wine industry has actively sought, very actively sought to improve its export position. We have repeatedly petitioned the Trade Representative of the United States to seek the removal of foreign barriers to our wines. While concessions have been granted to our foreign trading partners in the wine and other alcoholic beverage sectors in multilateral trade negotiations, very little has been done to obtain access to those foreign markets for U.S. wines.

For example, the U.S. duty on table wine has been reduced from $1.25 per gallon to its present 37½ cents per gallon. In the recently concluded Tokyo round of negotiations, at the request of the European Community the U.S. system was changed for the collection of excise taxes on alcoholic beverages, not wine, making it more favorable for alcoholic beverages imported into the United States.

In return—and we were asked to comment on this—the U.S. wine industry again received no real concessions in reducing or eliminating tariff or nontariff barriers.

The American wine industry does have the ability to substantially increase its exports abroad. Inventories for all wines at the end of June this year exceeded 500 million gallons, more than a year's supply for the domestic market. Thus, the U.S. wine industry finds itself in a very paradoxical situation. We are willing and we are able to export substantial quantities of wine to foreign markets, but we are prohibited from doing so by many of the very same countries that are freely selling their often-subsidized wine—and this has been documented—in the totally barrier-free American marketplace.

Because of the great imbalance in trade, the industry was led to believe by Government officials that positive actions would be taken to remedy this inequitable situation. The 1979 Trade Act submitted by the administration included provisions for the alcoholic beverage study previously mentioned. This 1981 study concluded that "Tariff and internal taxes combined are frequently a prohibitive factor for the importer of U.S. wines." It also concluded the same for nontariff trade barriers.

When the industry asked the Trade Representative what could be done to correct the situation, it was told that the President had no authority—and this was brought out before—to negotiate with foreign countries the removal of these barriers.

Mr. Chairman, the U.S. wine industry rightfully should be requesting its Government to move against subsidized wine imports and other unfair trade practices, but because such an undertaking might be perceived by some as protectionism, we declined to pursue this approach.

This industry could also wait patiently for another round of multilateral trade negotiations and again dutifully present its case for relief, as we have done in the past three rounds of negotiations. However, I think you will agree that the past history of lack of success and broken promises dictates that this course would not be fruitful.

The industry could also press for continued bilateral consultations in hopes of getting some results. The recently concluded EEC-U.S. wine accord is such an example. It took 9 years to conclude, 9 years. And while it provides long overdue recognition by the EEC of various advanced winemaking practices and procedures used by American wine producers, it fails to deal at all with the tariff and many of the nontariff barriers such as the minimum reference price. As a matter of fact, one major California producer has had to pay almost $400,000 in additional countervailing duties under this system in the past 3 years—on wine. That is clearly more than double the minimum reference price. Nineteen other wine-producing countries have received waivers from the system, but until this instant legislation was introduced, our Trade Representative refused to even request a waiver. I am not sure whether that has been done yet or not.

As you can see, we have not been very successful in pursuing the traditional remedies for our problem.

Mr. Chairman, and members of the subcommittee, in conclusion, I am here today in support of this legislation as the remedy badly needed by the wine industry. The serious problem faced by this sector of the U.S. economy can only be resolved by an equitable and fair solution—equitable and fair—which you can provide as the court of last resort.

It is alleged by some that our problems occur primarily because of economic conditions and the strong value of the dollar. While exchange rates, as I have indicated earlier, may have exacerbated the situation, trade imbalances and the lack of willingness of our trading partners to allow access to their markets are historic and will not be corrected through fluctuations in economic conditions.

For all of the above reasons, we seek this subcommittee's positive response to our request for favorable action on this legislation to permit us the opportunity to market our product abroad. And that is all we seek.

Mr. Clawson and I are available to respond to any questions, Mr. Chairman, you or members of the subcommittee may have.

[The prepared statement follows:]

STATEMENT ON BEHALF OF WINE INSTITUTE PRESENTED BY ARTHUR H. SILVERMAN, WASHINGTON COUNSEL,

My name is Arthur H. Silverman. I am Washington Counsel for Wine Institute, the trade asssociation of the California wine producers. We now have 472 member wineries. California-produced wine accounted for 68.6 percent of all wine, and approximately 92 percent of U.S. produced wine, entering distribution channels in the United States in 1982. I am accompanied here today by Mr. James B. Clawson, who is acting as consultant to the Wine Institute on trade matters.

Our statement addresses the need for this specific legislation, states why a sector approach is preferable and gives examples of the barriers that are restricting trade.

I. THE NEED FOR LEGISLATION TO INSURE ACCESS TO FOREIGN MARKETS FOR U.S. PRODUCED TABLE WINE

A. General purposes

Historically, there has been a substantial imbalance in international wine trade resulting from the easy accessibility enjoyed by foreign wines in the American market. The U.S. wine consumer has benefitted over the years from a wide variety of choice in type, quality, and price. The U.S. wine industry is dependent on the consumer and has absolutely no desire to restrict the wide range of wines available in the American Market. The industry continually strives to improve its product without an increase in price. The sole purpose of the Act is to achieve equity and fairness in international trade by encouraging export of U.S. produced wines. This will occur by achieving harmonization, reduction and elimination of tariff and non-tariff trade barriers so that American wines will be admitted into a foreign country on the same fair and equal basis as the wines of that country are admitted into the United States. We feel that the consumers in other countries should enjoy the same wide choices that are enjoyed in the U.S.

Unlike the wine industries in many foreign nations, the U.S. wine industry receives no government aid or subsidy. A recent Department of Agriculture study has confirmed that substantial subsidies are provided to the Italian wine industry which makes it possible for those wines to be unfairly sold at less than normal market prices in the U.S.

The U.S. wine industry considered seeking legislative prohibitions to the importation of subsidized wine. Such action would be protectionist and would restrict the consumer's choice. It should be emphasized that the American wine industry is concerned only with achieving the opportunity to export its product world-wide and has no desire to restrict availability of imports in the American marketplace.

Depsite the fact that American wine has achieved worldwide recognition among wine experts, everywhere the U.S. wine producer seeks to market his product abroad, he is faced with a maze of restrictive and prohibitive tariff and non-tariff barriers. In 1982, for example, foreign wines with a value of $781 million were imported into the U.S. while the value of U.S. wine exports amounted to only $38 million. This resulted in a trade deficit for wine alone of $743 million—2.1 percent of the entire U.S. trade deficit. While the change in currency exchange rates has exacerbated the problems, the imbalances are historical. The wine deficit in 1981 was 2.6 percent of the entire trade deficit.

B. History of industry efforts to seek access to foreign markets

The U.S. tariff rate for bottled table wine, post-Prohibition, was $1.25 per gallon. At the request of France, this rate was reduced to $0.075 per gallon effective June, 1936, and as a result of trade negotiations in Geneva, the tariff rate was again reduced to $0.040 per gallon in 1948. The multilateral trade negotiations in the 1950's further reduced the tariff to $0.375 per gallon where it has remained to this day.

In the two most recent multi-lateral trade negotiations, the Kennedy round of the 1960's and the Tokyo round of the 1970's, the wine industry requested the United States trade representatives to seek reduction from our trading partners in the tariff and non-tariff barriers to the importation of U.S. wine. The U.S. was unsuccessful in both negotiations in obtaining greater access to foreign markets for U.S. produced wine. The concerns of the industry over the continued imbalance and inequities surrounding wine trade have been brought to the attention of the Executive Branch and to the Congress. In testimony to this Committee in June and July of 1968, Wine Institute pointed out that the "Kennedy round" concerned itself primarily with tariff rates, not non-tariff barriers. Significant reductions were not obtained in either tariff or non-tariff barriers for U.S. wine products and there was little likelihood of a change in the trend of increasing imports. (*See* Report of Hearings Before the Committee on Ways and Means, House of Representatives "Foreign Trade and Tariff Proposals, 90th Congress, Second Session, Part 7," June 1968.)

In 1975, Wine Institute prepared extensive materials for the Trade Representative outlining the tariff and non-tariff barriers on a country-by-country basis. These were presented to the Government, along with the request that the Tokyo round of trade negotiations address those problems restricting U.S. access to foreign wine markets. Our Trade Representative did request discussions with a number of trading partners, and some concessions were negotiated with Iceland, Sweden, and Japan. In the case of Japan, the tariff reductions were minimal, leaving one of the highest tariffs of any of the U.S. trading partners. Iceland, with a population of less than 300,000 cannot appreciably affect U.S. exports and Sweden maintains strict internal controls with its state run liquor monopoly.

By comparison, the U.S. granted a major concession to our trading partners in the alcoholic beverage sector of a change in the computation of the excise tax on alcoholic beverages from wine-gallon to proof-gallon. This was in response to a particular request from the EEC whose producers benefited from the concession. Because of this concession with no compensation in return for the alcoholic beverage industry, we were told by the Administration at that time that some action would be taken to address the many barriers to the alcoholic beverage trade. The study mandated under Section 854 of the 1979 Trade Act is part of that action. The results of that study indicated that there are substantial barriers to trade in wine but, since its release in 1981, absolutely no action had been taken to reduce those barriers until the proposed legislation was introduced.

The Wine Institute understands the principles of multilateral trade negotiations. We know that concessions are given in one sector in exchange for concessions from a trading partner in another sector of the economy. We also expect that, over time, the various exchanges and agreements should "even out" and that no particular sector of a country's economy should continue to be "short-changed" or left out of the process. Wine Institute feels that in more than a quarter of a century of trade negotiations, it has seen concessions granted to foreign countries giving greater access to the U.S. wine market with virtually no similar concessions granted by those countries in return. As the statistics point out, the international trade in wine has become inequitable.

It is not the intent of this legislation to establish protection. To the contrary, the wine industry is merely seeking its turn for attention from its representatives in the federal government. It is seeking the harmonization and simplification of those many restrictions faced by exporters of wine products. We are told the Executive Branch does not feel it can adequately negotiate the reduction of these barriers without a new negotiating mandate and authority. Without creating another major "multilateral trade negotiation" it is the intention of the wine industry in supporting this legislation to provide that mandate and authority and to seek what is rightfully its turn at bringing to the attention of the world trading community what has been a long-standing inequity in equal access to markets for table wine.

C. Markets and imbalances

Total table wine consumption in the United States for 1982 was 396,867,000 gallons. This was an increase of approximately one percent over 1981. Of the table wine consumed in 1982, 105 million gallons or 26.5 percent of the consumption was wine imported from foreign countries. Imports reflect an increasing percentage of total market share. The import market share on consumption in 1976 was 20.2 percent—up from 6.3 percent in 1959. Figure 1 will give the history of the growth of wine entering distribution channels in the United States and the corresponding growth in imports.

By comparison, the total wine exports for 1982 were 9 million gallons, which was a 14 percent decrease over 1981. This has occurred in spite of strong consumption growth in markets such as Germany, the U.K., Switzerland, the U.S.S.R., Canada, and Japan.

In 1982, EEC countries (mainly Italy, France and Germany) exported about 20 percent more wine than 1981 (8.9 million hecto-litres in 1981, and 10.4 million in 1982). Exports to the United States from EEC countries accounted for about 38 percent of total EEC wine exports in 1982. U.S. exports to EEC countries dropped almost 15 percent for the similar period. This drop occurred after the U.S. had increased exports to EEC countries the previous year (1981 over 1980) by 102 percent.* Exports of U.S. wine to Canada dropped 19.3 percent in 1982 while Canadian imports from EEC countries increased 20 percent. The U.S. wine industry feels these statistics are a reflection of the continuing effect of high barriers to U.S. wines.

D. Barriers to U.S. wine exports

U.S wine producers operate at a disadvantage in competition with other wine producing countries in foreign markets. To quote a government-conducted study completed under Section 854(a) of the Trade Agreements Act of 1979:

"Of the government-imposed obstacles to wine trade, tariff and nontariff barriers are both significant. Tariffs and internal taxes combined are frequently a prohibitive factor for the importer of U.S. wines. Examples of countries with high tariffs are Japan, Korea and Sweden. In contrast, U.S. tariffs and taxes are among the lowest of the world's wine producers.

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* Sources: EUROSTAT, Wine Institute, Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department and Bureau of the Census, U.S. Department of Commerce.

"Nontariff barriers which hamper U.S. exports of wine include certification requirements (e.g. European Economic Community (EEC), Mexico, Venezuela), license and quota systems (e.g. Austria, Switzerland, New Zealand), government/provincial monopolies (e.g. Canada, Sweden), and process, bottling and labeling requirements (present to some degree in all producing countries). The industry has also complained about customs delays for U.S. wine shipments, and the EEC reference price system for wine."

The allegation has been made that the U.S. wine industry has been primarily interested in protecting its home markets and has "made no effort to expand exports". Nothing could be further from the truth. Table 1 reflects the trade history of wines since 1950. As the industry has matured its exports have increased. Growth would have been much greater but for the institutional barriers restricting access to other markets.

II. NEED FOR SECTOR APPROACH

The Wine Equity Act provides the President the authority to negotiate the reduction and elimination of tariff and nontariff trade barriers so as to provide United States produced wines fair and equal access to foreign markets. Under this legislation, the President is authorized, if he finds a country refuses to reduce or eliminate its barriers to U.S. wine, to impose on wines imported into the United States from that country the same tariff and non-tariff restrictions that are applied by that country to U.S. wines when imported into that country. As pointed out in this testimony, the history of action on the part of the Executive Branch on behalf of the wine industry to reduce barriers in foreign countries has not been good. It seems that there is always another "more important sector of the economy" that needs attention. If the wine industry were to await another multi-lateral round of trade negotiations or the enactment of reciprocity-type legislation, it is believed that, once again, wine would receive a low priority and would have to take a "back seat" to the problems of the "smokestack" industries in the United States.

The wine industry does not have similar problems. The equipment and techniques used in wine production are the most modern and efficient in the world. Given fair market conditions (i.e. equivalent tariffs, non-tariff barriers, elimination of subsidies, etc.), the U.S. industry will prove itself as more competitive than other producing nations. As certain legislation has been needed in the past several decades to bring to the attention of governments the interests of minorities, e.g. civil rights, environmental protections, small business, etc., this sector legislation is needed to direct the attention of governments to the problems of one of the small but important sectors of the economy.

In addition, a sector approach can be helpful because trade issues have become complex, difficult to understand, and even somewhat mysterious. This has caused a chilling effect on the efforts to seek solutions to trade problems. During the GATT Ministerial meetings of November, 1981, officials seemed to walk away from problems because they are so difficult. Perhaps if our trade problems could be dealt with in smaller, one-at-a-time sector issues, the solutions may be easier to obtain. For example, the United States for a number of years has had difficulty with the European Community's common agricultural policy. The minimum reference price system, labeling, certification and other regulations applied to wine are part of that overall agricultural policy. If the U.S. were to address the reference price system as it relates to U.S. wines to seek an accommodation, the Community may be more willing to make adjustments for this sector rather than make major changes to the entire system. We have tried the comprehensive multi-sector approach, and while it may have worked in the past for some, it is not working today for wine. We already have a sector approach in international trade through the various commodity agreements in sugar, coffee and textiles etc. Special attention is sometimes the only way to resolve a problem.

Finally, a sector approach responds to the intent of Congress as stated in the 1979 Trade Act, when Section 854 was included. Trade in alcoholic beverages was identified as an issue in need of special attention. The Wine Equity Act fulfills that Congressional intent.

III. SPECIFIC EXAMPLES OF TARIFF AND NONTARIFF BARRIERS

A. Mexico

1. Tariff and non-tariff barriers have virtually prohibited the development of Mexico as a market for U.S-produced wines. The tariff is 53.5 percent ad valorem and is based on the "official" or invoice price, whichever is higher. The official price is that established by the established by the government. In addition to the tariffs, there is a bottling tax of 10 percent, a 5 percent ad valorem stamp tax, and a luxury tax of 17 percent.

2. In non-tariff measures, in addition to the label and certification requirements which are similar to many other countries, there is a quota. Imports are restricted to approximately 400,000 cases total,-of which the U.S. share is approximately 25 percent. The administration of the quota also raises some questions since one California producer has been unable to get authority to ship even one case in over two years.

B. Argentina

The administration of the regulations in Argentina effectively precludes the shipment of any U.S. wines. The tariff on bottled wine is 38 percent ad valorem, and the value added tax is 10 percent. There are labeling requirements, but the certification requirement, which must be obtained from the Argentine authorities proving that the chemical composition conforms to Argentine standards is the most difficult with which to conform. In order to obtain the certificate, three samples must be taken from each shipment after the merchandise reaches port. We understand that frequently the wine is found in non-conformance to the standard. The problem could be adjusted but the cost of returning the shipment to the United States and then reshipping is prohibitive. No shipper is willing to continue exporting under those conditions.

C. Canada

Canada is one of the few countries with a tariff lower than that in the United States. It is $0.24 per gallon, but the excise tax is $1.05. The major problems in Canada are the non-tariff measures. For example, the listing and mark-up policies of the provincial liquor control boards are used to limit sales of U.S. wine. As reported in the U.S. government's 854 alcoholic beverage study:

"Provincial liquor control boards have discretion as to whether or not to accept a product for sale and have complete control over product display. Only Alberta and Prince Edward Island stock American wines in numbers comparable to their Canadian and European competitiors. More typical is Ontario which lists 33 U.S. table wines along side 223 Canadian and 212 French items. Foreign wines that are listed can be displayed only in the single bottle size and, those that fail to achieve a "satisfactory" level of sales, are de-listed. The Quebec Liquor Corporation is itself a bottler and marketer of "Quebec" wines which are mainly wines imported from Europe in bulk. These wines enjoy sole access to grocery store outlets in the Province."

Mark-up difficulty varies from province to province. The most significant differential occurs in the two major wine-producing provinces. In Ontario, imported wines are marked up approximately 125 percent, while domestic Ontario wines are marked up about 50 percent. Wines from other Canadian provinces are marked up approximately 100 percent. In British Columbia, imported wines, including wines from other Canadian provinces, are marked up 100 percent, while British Columbia wines are marked up only about 40 percent. Since the liquor control boards have complete discretion on pricing, these policies can effectively close a market to U.S. wines while allowing both Canadian and European wines to sell freely.

D. Egypt

As a domestic market, Egypt is not particularly significant. However, there are more than 1 million tourists visiting Egypt annually, and the number is growing. The tourist hotel and restaurant market is worth developing. Similar markets occur in the Caribbean where the Bahamas and the Netherlands Antilles import far beyond normal domestic consumption.

The duty on wine in Egypt is 1800 percent ad valorem. In addition, there are certain other duties that vary from time to time, such as an economic development duty, consumption duty, and a military duty. In 1982, these amounted to approximately another 30 percent ad valorem. Recently, one U.S. exporter shipped 40 cases to Egypt as samples for several of the hotels in the area. The initial duty levied on the shipment was in excess of $9,000 (U.S.).

E. Australia

The tariff for table wine in Australia is approximately $1.00 per gallon. There is also a 15 percent sales tax that is levied on imported wines but not on domestic wines.

F. Hong Kong

The tariff in Hong Kong is approximately $5.00 per gallon and there are no taxes.

G. Philippines

The tariff on table wine in the Philippines is 50 percent ad valorem, and there are strict quota/currency controls. The central bank allocates approximately $12 million annually for the importation of alcoholic beverages.

H. Singapore

Singapore is similar to the Caribbean islands and Egypt in that it has a substantial tourist trade. The tariff is currently reported to range between $5.00 and $44.00 per gallon depending upon the type of wine.

I. Japan

The current tariff on table wine is 280 yen per litre or 55 percent ad valorem whichever is less subject to a 199 yen per litre minimum. The maximum tariff rate at today's exchange rate works out to approximately $4.50 per gallon. The high tariff rate puts U.S. produced wine in the luxury wine category. The excise tax is then 50 percent ad valorem. In addition, there are a number of non-tariff barriers including labeling, certification and testing requirements.

J. European Economic Community

There are ten countries currently members of the European Economic Community (EEC). Even though each country administers the import laws, they are governed by a common external tariff. The rate for table wine is 14.5 European currency units (ECU). An ECU is not an official currency, so each country reflects the tariff rate established periodically by the EEC. That rate results in a current (September, 1983) U.S. dollar range of approximately 45 to 55 cents per gallon, depending on the country.

In addition to the tariff, there are a number of non-tariff barriers that effectively reduce or prohibit the importation of U.S. wines. These include a minimum reference price system, certain labeling requirements, and internal marketing and distribution system.

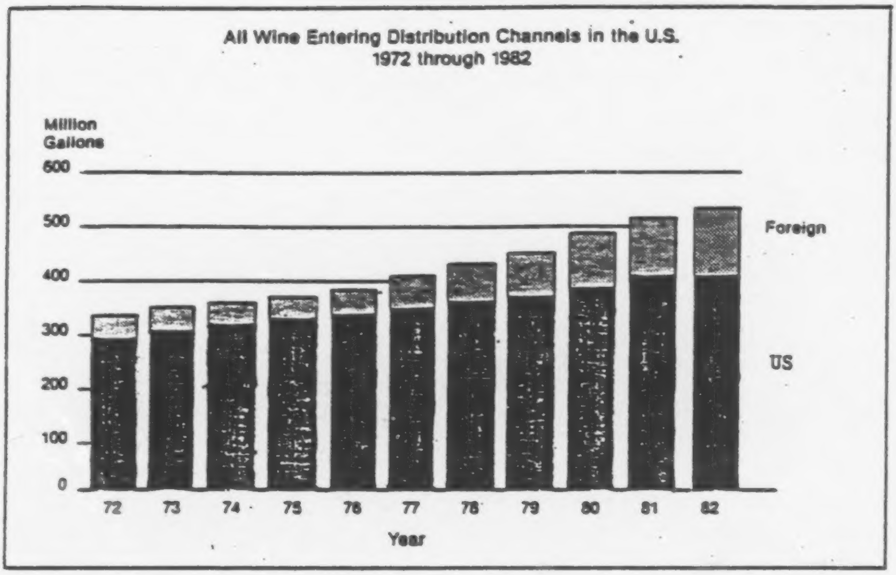
IV. CONCLUSIONS

In July, 1983 the United States and the European Economic Community signed an agreement that provides long overdue recognition by the EEC of various advanced winemaking practices and procedures used by U.S. wine producers. The accord provides for mutual recognition of certification requirements, refers to geographical designations on origin of wine, provides acceptability of mutual wine labeling requirements, and calls for cooperation on international fraud negotiations.

The agreement took nine years to negotiate and only covers a small technical portion of the existing barriers. The accord fails to deal with semi-generic designations, ion exchange, minimum reference price and other barriers. The industry is happy with the results obtained but the accord does not remove the major burdens facing the U.S. wine producer in the EEC. It fails to deal with the many tariff and non-tariff trade barriers, such as reference price, license and quota systems. It took too long to gain so little.

To obtain the equity in international wine trade with the EEC and the many other potential wine markets of the world, the Wine Equity Act is needed. It will encourage the export of U.S. produced wines by achieving harmonization, reduction and elimination of tariff and non-tariff trade barriers so that American wines will be admitted to a foreign country on the same fair and equal basis as the wines of that country are admitted into the U.S.

FIGURE 1



Sources: Prepared by Economic Research Department, Wine Institute, from reports of California Board of Equalization; Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department and Bureau of the Census, U.S. Department of Commerce.

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TABLE 1
U.S.
WINE EXPORTS HISTORY
(gallons 000s)

YEAR	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN	CANADA
1950	*	NA	--	0.024	*	18.8
1960	0.502	0.848	2.7	*	*	192.2
1970	*	NA	3.2	*	*	265.1
1975	*	25.3	11.9	*	*	461.3
1978	**	6.0	5.2	**	**	991.4
1980	**	52.4	178.5	**	**	4,612.7
1981	**	144.2	337.3	**	**	5,547.5
1982	**	45.8	249.4	**	**	4,476.7

YEAR	U.K.	BELGIUM/ LUXEMBURG	NETHERLANDS	DENMARK	IRELAND	JAPAN
1950	0.019	0.096	0.398	*	0.274	21.3
1960	0.367	0.744	*	*	*	5.6
1970	5.5	NA	*	*	*	14.3
1975	NA	NA	*	*	--	116.0
1978	33.9	29.6	10.8	0.7	0.0	150.9
1980	530.9	225.5	82.0	26.8	65.9	207.3
1981	1,106.7	345.8	123.6	70.1	90.7	243.5
1982	77.7	225.3	35.0	111.4	49.8	278.2

TOTAL WINE EXPORTS		Change Over Previous Years +/- Percent
1950	184.3	
1960	275.6	+ 49 %
1970	424.9	+ 54 %
1975	1,229.2	+189 %
1978	2,485.0	+102 %
1980	7,869.0	+216 %
1981	10,582.8	+ 34 %
1982	9,102.4	- 14 %

* Less than 0.1
** Less than 17.0

TABLE 1
(continued)
U.S.
WINE IMPORTS HISTORY
(gallons 000s)

YEAR	ITALY	FRANCE	GERMANY	PORTUGAL	SPAIN
1950	728	643	124	10	26
1960	1,926	2,041	901	116	152
1970	3,771	6,675	2,764	3,890	2,084
1975	11,883	7,412	6,103	6,716	4,163
1980	59,545	13,294	11,874	5,798	7,469
1981	66,287	17,539	13,275	5,505	7,150
1982	70,107	20,339	13,482	5,188	7,693

YEAR	ARGENTINA	CHILE
1950	3	175
1960	-	49
1970	15	97
1975	124	18
1980	177	225
1981	192	275
1982	189	290

TOTAL WINE IMPORTS		Change Over Previous Years +/- Percent
1970	20,448	
1975	39,070	+ 91 %
1980	102,507	+162 %
1981	114,713	+ 12 %
1982	122,089	+ 6 %

SUMMARY STATEMENT

My name is Arthur H. Silverman. I am Washington Counsel for Wine Institute, the trade association of the California Wine producers. We now have 472 member wineries. California-produced wine accounted for 68.6 percent of all wine, and approximately 92 percent of U.S. produced wine, entering distribution channels in the United States in 1982. I am accompanied here today by Mr. James B. Clawson, who is acting as consultant to Wine Institute on trade matters.

The wine industry of the United States depends on the American consumer. The industry continually strives to improve its product without an increase in price. It is acknowledged by wine experts worldwide that the quality continues to improve and California wines in particular are as competitive as any found in the fine wineries of Europe.

The U.S. market is an open and growing market. Over the past several years the supply for this increased growth has been provided almost entirely through a rise in inexpensive imports. The domestic industry is not interested in controlling imports or in imposing an additional duty that would increase the price to the consumer. Nor does the industry seek any special treatment of any kind in the American market.

On the other hand, a recent study concluded by the Department of Agriculture confirmed that substantial subsidies are being provided by foreign governments to their wine producers. The study looked particularly at Italian producers whose products make up the bulk of U.S. wine imports.

While many U.S. producers and growers are concerned about the unfair trade advantages resulting from the subsidies, the proposed legislation deliberately does not speak to the subsidy question. The purpose of this legislation is not to impose additional duties or erect non-tariff barriers to wine entering the United States. The legislation is solely intended to improve access to foreign markets so that American wines will be admitted into a foreign country on the same fair and equal basis as the wines of that country are admitted into the United States. Thus, this legislation may be aptly described as an export equity and fairness bill.

Wine has been a major commodity of trade since the beginning of time. With the exception of Prohibition, the United States has always imported wine. Domestic producers have historically produced most of the wine consumed in the United States and as the domestic industry has matured, it has sought to market its products abroad in much the same way as foreign producers have freely marketed their products here.

Historically there has been a substantial imbalance in international wine trade. This results from the easy accessibility enjoyed by foreign wines in the American market, which is in direct contrast to the export position of the U.S. wine industry in virtually every existing or potential foreign wine market. The United States has the lowest tariff on table wine of any significant wine-producing country. The U.S. imposes no non-tariff trade obstacles to the entry, distribution and sale of foreign wines. Foreign wines move freely in the American market, subject only to the same laws and regulations which apply to American wines. By contrast, many other industrialized countries impose duties on American-produced wines at least double that of the United States, with some ranging as high as Japan's $4.50 per gallon. In many potential foreign wine markets, non-tariff barriers are even more formidable than tariff barriers. A study completed by the Executive Branch of the government and submitted to Congress in 1981 substantiated that countries such as Mexico, Brazil, Argentina and Chile maintain virtual prohibitions to U.S. wines through systems of licensing, testing, quotas and certification. Other markets such as Canada and the European Economic Community maintain internal regulations, such as minimum reference prices and product mark-up systems, that discriminate against U.S.-produced wines.

The effect of these foreign tariff and non-tariff barriers is reflected in the U.S. trade deficit. For example, in 1982 foreign wines with a value of $781 million were imported into the U.S. while the value of U.S. wine exports amounted to only $38 million. The result was a trade deficit for wine alone of $743 million—2.1 percent of the entire U.S. trade deficit. Over 122 million gallons of imported wine were consumed in the U.S. in 1982 while merely 9.1 million gallons of U.S. wine was sold to foreign markets, almost half of which went to one country—Canada.

For the past 15 years the American wine industry has actively sought to improve its export position. We have repeatedly petitioned the Trade Representative of the United States to seek that removal of foreign barriers to U.S. wines. While concessions have been granted to our foreign trading partners in the wine and other alcoholic beverage sectors in multi-lateral trade negotiations, very little has been done to obtain access to those foreign markets for U.S. wines. For example, the U.S. duty on table wine has been reduced from $1.25 per gallon to its present 37.5 cents per gallon. In the recent Tokyo round of negotiations, at the request of the European Community, the U.S. system was changed for the collection of excise taxes on alcoholic beverages making it more favorable for alcoholic beverages imported into the United States. In return, the U.S. wine industry again received no real concessions in reducing or eliminating tariff or non-tariff barriers.

The American wine industry has the ability to substantially increase its exports abroad. Inventories for all wines at the end of June this year exceeded 500 million gallons—more than a year's supply for the domestic market. Thus the U.S. wine industry finds itself in a paradoxical position: we are willing and able to export substantial quantities of wine to foreign markets, but we are prohibited from doing so by many of the very same countries that are freely selling their often subsidized wine in the totally barrier-free American marketplace.

Because of the great imbalance in trade, the industry was led to believe by government officials that positive actions would be taken to remedy this inequitable situation. The 1979 Trade Act submitted by the Administration included provision for the alcoholic beverage study previously mentioned. This 1981 study concluded that "tariff and internal taxes combined are frequently a prohibitive factor for the importer of U.S. wines." When the industry asked the Trade Representative what could be done to correct the situation, it was told that the President had no authority to negotiate with foreign countries the removal of these barriers.

Mr. Chairman, the U.S. wine industry rightfully should be requesting its government to move against subsidized wine imports and other unfair trade practices. But because such an undertaking might be preceived by some as "protectionist", we declined to pursue this approach. The industry could also wait patiently for another round of multi-lateral trade negotiations and again present its case for relief, as it has done in the last three rounds of negotiations. The past history of lack of success and broken promises dictates that this course would not be fruitful.

The industry could also press for continued bi-lateral consultations in hopes of getting some results. The recently signed EEC-U.S. wine accord is such an example. It took nine years to conclude and while it provides long overdue recognition by the EEC of various advanced winemaking practices and procedures used by American wine producers, it fails to deal with the tariff and many of the non-tariff barriers such as the minimum reference price. One major California producer has had to pay almost $400,000 in additional countervailing duties in the past three years under this system—on wine that is clearly more than double the minimum reference price. Nineteen other wine producing countries have received waivers from this system, but until this legislation was introduced, our trade representative refused to even request a waiver. As you can see, we have not been very successful in pursuing the traditional remedies for our problem.

Mr. Chairman, and members of the Subcommittee, I am here today in support of this legislation as the remedy badly needed by the wine industry. The serious problems faced by this sector of the U.S. economy can only be resolved by an equitable and fair solution provided by you as the court of last resort. It is alleged that our problems occur primarily because of economic conditions and the strong value of the dollar. While exchange rates may have exacerbated the situation, trade imbalances and the lack of willingness of our trading partners to allow access to their markets are historic and will not be corrected through fluctuations in economic conditions. For all of the above reasons, we seek this Subcommittee's positive response to our request for favorable action on this legislation to permit us the opportunity to market our product abroad.

Mr. Clawson and I are available to respond to any questions you may have.

Thank you.

Chairman GIBBONS. All right. Let us take the rest of the witnesses.

Mr. Weidert.

STATEMENT OF JOHN WEIDERT, PRESIDENT, AMERICAN GRAPE GROWERS ALLIANCE FOR FAIR TRADE

Mr. WEIDERT. Thank you, Mr. Chairman.

I am John Weidert, president of the American Grape Growers Alliance for Fair Trade, which is a very recently established organization to represent and work with grape growers across the country on matters dealing with international trade.

The alliance represents growers, grower organizations, cooperatives at this point, and we are still also in the formative stages.

Our growers produce grapes for wine, for table use, and for raisins primarily, and in some States also for other grape products as well.

So we look at this thing from the perspective of the producer out there with a vineyard who is getting squeezed and is concerned about the economic health of the industry, and, in fact, perhaps the survival of the industry if there are not some corrections made in our course.

Now, the Wine Equity Act in our opinion represents an important step toward alleviating the problems that are confronting the grape industry today. In 1982, last year, the foreign wine imports accounted for $781 million as compared to our wine exports which were valued at about $38 million, and if my elementary math is correct, that would mean that about 2 percent of our trade deficit is made up in wine. So it is a significant, albeit perhaps it might look small, but it is a significant part of our national problem.

The Wine Equity Act would help to cure some of this current trade imbalance. The act calls for the President, as we heard earlier, to reduce the tariff and the nontariff barriers that are being applied to our wine exports. And if the President is unable to equalize these trade barriers, then he would be required to raise our tariff and nontariff barriers to levels that are equally or substantially equivalent to those of our trading partners.

Now, perhaps it is a tough approach, but we feel that you come to the point where you have to do something to survive, and you have to use a variety of tools to do it. In our opinion, the Wine Equity Act is a partial solution to the problem. We think also, however, that there are some other things that should be considered.

We are confronted with a serious and a growing problem from subsidized wine imports. Although the U.S. wine industry has benefited in the past from the expansion of our domestic market, in recent years the subsidized imported table wines continue to capture a larger and a larger share of our U.S. consumption market. As a result, inventories of domestic wines have increased substantially, and grape grower prices at the same time, as a result, have declined sharply. Last year the average price of grapes crushed for wine dropped almost 25 percent from the year before, and a further decline is expected by the time the figures are all in this year. Fewer Thompson seedless grapes, which are grown in California primarily, are being crushed by the wineries, and that means that a larger volume of those grapes are being forced into the domestic raisin market. And therein we have another problem, depressing the prices in that segment of the market.

Together these factors have created one of the most severe economic periods in the history of the domestic grape industry in this country.

Now recognizing the serious state of the domestic grape industry Senator Wilson over in the Senate called upon the Department of Agriculture to do a study and perhaps you are somewhat familiar with that. The USDA study which was just recently released has concluded that due to a vast array of production and financial subsidies European Community wine imports are enjoying a far more favorable economic position in our U.S. market today.

Close to a third of the growth in the U.S. market over the past decade has been filled by imported wines; 85 percent of the growth in U.S. imports has been from Italian wines, and they make up about 60 percent of last year's total imported wines. I think the French wines are up around 17 percent or so.

Numerous production and financial incentives according to that USDA study go into subsidizing the product as it comes into this country, incentives and subsidies that are unavailable to the farmers and the industry in this country.

We are not asking for those kinds of subsidies. What we are asking for is an opportunity to compete on equal terms.

These subsidies that they are getting have undoubtedly influenced the ability of the French and the Italian wineries to expand their penetration of our market. Further, these domestic subsidies have stimulated overproduction within the European Community, and as a consequence we have evidence now that the Economic Community is looking to overseas outlets for disposal of part of its surplus and particularly has targeted the United States where they see the greatest potential opportunity.

Now the domestic grape growers in this country are not seeking protection. Actually what we do not seek is protection from fair and effective competition.

We are willing to accept competition. However, we do seek a fair opportunity to market our product whether it be in our domestic market or in foreign markets. We do not feel that we should have to compete with unfair tariff and nontariff barriers nor do we believe that we should have to compete with subsidized imports.

The Wine Equity Act, therefore, as I indicated earlier represents, we think, an important part of a total solution. The American Grape Growers Alliance for Fair Trade applauds this committee for its action in moving forward on the Wine Equity Act.

We also feel that the committee should give serious consideration to the problems that are being caused to our domestic industry by these subsidized imports. Unless something is done the health of the industry will continue to be seriously threatened.

It comes down to the fact that our growers simply cannot compete with the treasuries of the countries in the economic community or any other foreign countries as far as that goes. Some people say, well, are some of the things that you are talking about or proposing not tantamount to a trade war?

Well, I would submit to you that if you talk to some of the grape growers around the country who have a product to market that they would indicate to you that we are in a trade war now, that we did not start it, but if we do not do something about it we will be the victims of it.

So it is a matter of how long can you turn the other cheek and stand by and let this sort of thing take place before it is time, and we think now is the time for all of us to get together to look at all of the alternatives and to move forward on those that could potentially correct the problems.

We thank you for the opportunity to appear here today, Mr. Chairman.

Chairman GIBBONS. Thank you.

Mr. Stackhouse.

Mr. STACKHOUSE. Mr. Chairman, in the interest of time I shall summarize my testimony in favor of House Resolution 3795, the Wine Equity Act.

Chairman GIBBONS. We will have to ask you to get that microphone a little closer.

Mr. STACKHOUSE. I respectfully request, Mr. Chairman, that the written testimony submitted——

Chairman. GIBBONS. Yes, sir. It will all be included.

STATEMENT OF NATHAN G. STACKHOUSE, JR., PRESIDENT, ASSOCIATION OF AMERICAN VINTNERS, ACCOMPANIED BY ROBERT F. SAGLE, GENERAL COUNSEL

Mr. STACKHOUSE. My name is Nathan G. Stackhouse, Jr. In addition to being an enologist or wine master of the Bernard D'Arcy Wine Cellars in Absecon, N.J., I am president of the Association of American Vintners representing 110 wineries in 27 States.

I am accompanied here by Robert F. Sagle, general counsel to the Association of American Vintners. I have a degree in enology from the University of California in Davis and 25 years' experience in this industry.

My written testimony highlights the historic and the present problem American winemakers have in being able to compete with foreign wine. While the U.S. provides a fair and open market for domestic and imported wine several foreign countries have sought to gain an unfair advantage over American wines by subsidizing the export of their wines to the United States while erecting tariff and nontariff barriers which prevent American wine from being marketed in their country.

As a result imported wine and particularly imported wine from Italy where subsidies abound has achieved a strong growth and a substantial share of the U.S. wine market. Conversely American exports have scarcely made any dent in foreign markets, and American wineries especially smaller wineries are stymied at almost every turn in their efforts to develop export markets.

While I shall not quote the trade statistics showing continuing trade deficits attributable to wine dramatic increases in wine imports and nominal, if any, increases in wine exports I feel compelled to observe that the problem has been around for years and that no solution has been found in any legislative or diplomatic efforts which have thus far been taken.

The President is seeking the entry of more American products into Japan, but what is he doing to get American wine into the Japanese market which has effectively excluded our wine by a $4.50 a gallon tariff. What has the special trade representative done to eliminate European tariff and nontariff barriers against American wine apart from resolving a few issues related to the nomenclature and ingredients in the July accord with the European Economic Community.

I would like to clarify that issue, Mr. Chairman. We are regulated as you know by the Bureau of Alcohol, Tobacco, and Fire Arms. Our regulations say what we are not permitted to do in wine making.

In the European Economic Community on the other hand regulations say what they are permitted to do. If they do not say they are permitted to do it they say you are not permitted to do it.

It took us some years. I believe a member of your committee stated it was 9 years to resolve this issue to allow our regulations to be accepted by the European Economic Community, 9 years, sir.

The answers to these questions hold no promise for the American wine producer. Mr. Chairman, 25 years ago when both you and I were far younger men there were less than 200 wineries in the United States.

Today there are over 1,000. This has been a substantial growth industry. We are now in a position to effectively challenge world markets with our products, and we are being totally stymied by it.

I would also like to point out that while a lot of this growth has come since 1979 the act of 1979 does not in effect delay our paying of exise tax as has been stated. We used to have to pay our exise tax by the third working day of the close of the report period.

The act of 1979 now gives us the leeway to pay that tax by the end of the reporting period, but we still have to pay our exise tax every 15 days. We might have a one time advantage or "use of our exise tax money" but it is a one shot deal.

The Wine Equity Act is our hope that fairness can be restored to the international wine trade. Foreign governments have had years to lower or eliminate their trade barriers and have taken no action in that direction.

They cannot now seriously be heard to protest having the same requirements imposed on their wine in our country as they impose upon our wine in their country. Mr. Chairman, we do not receive subsidies nor are we seeking a handout from the Government or from our fellow taxpayers.

We are seeking, and the Wine Equity Act provides, only an opportunity to compete on an equal basis in a fair and open market. I shall be happy to respond to any questions you or members of your subcommittee may have.

[The prepared statement follows:]

STATEMENT OF NATHAN G. STACKHOUSE, JR., PRESIDENT, THE ASSOCIATION OF AMERICAN VINTNERS,

Mr. Chairman and Members of the Subcommittee:

My name is Nathan G. Stackhouse, Jr. I am the Winemaster of the Bernard D'Arcy Wine Cellars in Absecon, New Jersey, and the President of The Association of American Vintners ("AAV"), a nonprofit association representing 110 wineries located in 27 states. A current list of AAV members has been submitted as an exhibit to my written testimony. While AAV membership is diverse, ranging from small, family-run wineries to large corporations employing hundreds of people, we are unanimous in our strong support for H.R. 3795, the Wine Equity Act of 1983.

I want to make it perfectly clear at the outset that American winemakers do not seek, and the Wine Equity Act does not give, any subsidy or handout to American wineries. We are justifiably proud of our products, made without government funding or any other burden on our fellow taxpayers, and we seek only the opportunity to compete with our fellow winemakers throughout the world in fair and open markets, both here and abroad.

The United States imposes the lowest tariff on imported table wine of any major wine producing country in the world—37½ cents per gallon. Moreover, the United States imposes no nontariff trade barriers against foreign wines, and both domestic and foreign wines move freely in our marketplace. Unfortunately, our enlightened attitude toward international wine trade is not shared by the rest of the world. Many foreign winemakers receive government subsidies, enabling them to sell their products in the United States at less than the cost of shipment alone. Many foreign governments are delighted to flood our fair and open market with their wines, but make it so difficult for American wines to enter their markets that most of our small and medium-sized wineries, and many of our larger wineries, have been discouraged even from attempting to develop export markets. The result has been a steady growth of imported wine in the United States and virtually no development of our wine export markets abroad. For example, as we meet here one of our Wisconsin members is trying to overcome the West German and United Kingdom barriers to selling his wine in those countries, and a South Carolina member continues to be frustrated in his attempts to sell his wine in the Carribean.

Since 1967, the growth rate of imported table wines has been about triple that of domestic table wines in the United States.[1] In the first five months of 1983, domestic table wine enjoyed a modest growth of less than 1 percent from the similar period in 1982,[2] with imports growing by almost 11 percent.[3] For those first five months of 1983, imported table wine amounted to more than 26 percent of all table wine sold in the United States, and over 58 percent of these imported wines were produced in Italy.[4] This substantial share of the table wine market has resulted not because of any demand for quality Italian wines. Rather, the market share is the result of the flooding of our market with inexpensive wine, appealing to consumers primarily because of its price, which can only be priced so low because it is subsidized by the Italian government.

As a winemaker, I recognize the need for a variety of wines in terms of quality and price in a fair and open market. Consumers who place price over all other factors in their selection of a wine are entitled to a choice of inexpensive wines, and both foreign and domestic wineries should compete to fulfill this market demand. When, however, the foreign wine is so heavily subsidized by the foreign government that it arrives in the United States after production, packaging, and shipment selling for less than the cost of the bottles alone, we seriously question whether the market is really fair.

A recent study made by the Department of Agriculture[5] has substantiated what American wineries have believed for years—that Italian wines imported into the United States have been and are now being heavily subsidized by the Italian government so that they may be shipped to and sold in the United States for a price far below the actual cost of production, packaging, and shipment. We believe that while the Italian practice may be the most blatant and the most disruptive to the fairness of the domestic market, other foreign countries also subsidize, directly or indirectly, their wineries with respect to products exported to the United States. I respectfully suggest to this Subcommittee that the practice of granting such subsidies is unfair and tilts the market so greatly in favor of subsidized foreign wine that our American producers simply cannot compete or, over the long term, survive. Thus, we desperately need to be able to open up new, broader markets abroad for American wine. To accomplish this, we need the leverage the Wine Equity Act would provide.

There was much talk generated during the deliberations on and after the passage of the Export Trading Company Act of 1982[6] on the subject of the need to promote the export of United States goods and services. It seemed that the Congress and the Administration were telling us that we must promote exports in order to survive and that the Export Trading Company Act was the vehicle by which we could finally open up international trade. Those of us who looked past the promotional glitter to the cold, hard realities of international wine trade have discovered a continuing and unchanging exclusion of American products through tariff and nontariff barriers which no recent legislative or Special Trade Representative efforts have curtailed. The President is seeking the entry of more American products into Japan where our wine is effectively excluded. We ask, "What is the President doing to get American wine into Japan?".

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[1] The Wine Marketing Handbook 1983, pp. 66 and 98.

[2] National Association of Beverage Importers, Import Statistics, Sep. 6, 1983.

[3] *Id.*, July 7, 1983.

[4] *Id.*, July 7, 1983, Sep. 6, 1983.

[5] The European Community's Assistance Programs for Wine, Oct. 5, 1983.

[6] Pub. L. No. 97-290, 96 Stat. 1233.

Studies show that while American wine exports have increased since 1975, such growth is mainly attributable to exports of bulk wine to Canada where it is blended with Canadian wine and sold as a product of Canada.[7] Our supposed gains in the export market have been illusory, particularly in view of the fact that the share of the world-wide export market held by European countries increased from 77.5 percent in 1970 to almost 95 percent in 1979 and shows no signs of any precipitous decline. Figures for the 9-month period ending June 30, 1983, show that while bottled table wine production in the United States increased slightly over 1982 levels, bottled wine exports declined over 17 percent.[8] If the American wineries are expected to remain viable through export, I respectfully suggest that our domestic wine industry may be in serious trouble. The 1982 trade deficit in wine alone amounted to nearly three-quarters of a billion dollars and accounted for over 2 percent of the total trade deficit. The statistics currently available suggest that the trend over the past several years will not reverse in 1983 or, indeed, anytime thereafter without your help.

American wines are clearly being discriminated against in foreign markets. European countries, often thought of only in terms of their wine exports, routinely account for over 70 percent of the world-wide wine imports, and yet American wines are scarcely able to make a dent in the European markets. Tariffs in the European Economic Community alone are double those imposed by the United States on imported wine, and numerous nontariff barriers either exclude American products directly or make the cost of entry so great that we cannot complete on any equitable basis in any of those markets.

The Special Trade Representative is fond of pointing to the accord reached with the European Economic Community this past July as a demonstration of its efforts to negotiate reductions or eliminations in foreign trade barriers. Notwithstanding the fact that the accord, as limited in scope (essentially to ingredients and label nomenclature) as it may be, is a step toward some reduction in trade barriers, the negotiators themselves readily admitted that many, many more issues remain to be resolved and that the participants are still far apart on some of the thorniest of those issues. We believe that such negotiations, while they still are a long way from achieving really meaningful reduction or elimination of the barriers erected against American wine, should nevertheless continue. The Wine Equity Act not only permits such negotiations to continue, but also provides express authority for such negotiations and, by authorizing reciprocal trade measures, establishes a procedure which dramatically strengthens our negotiating position. Foreign governments have had many years to lower or eliminate their barriers. They cannot now seriously be heard to protest having the same requirements imposed on their wine in our country as they impose upon our wines in their country.

I began by telling the Subcommittee that American winemakers do not seek any handout or subsidy from the government or from our fellow taxpayers. I shall conclude by stating that all we want, and all the Wine Equity Act provides, is an opportunity to compete in a fair export market which has been stripped of tariff and nontariff barriers which effectively exclude American wines. The Wine Equity Act is a reasoned, rational approach to a very serious problem which gives the Administration both the authority necessary to accomplish the goal and the flexibility to tailor reciprocal trade measures to those imposed by foreign governments. In short, the Wine Equity Act is a positive, workable step toward the goal of equity and fairness in international wine trade.

I greatly appreciate the opportunity to appear today before the Subcommittee and would be pleased to respond to any comments or questions you, Mr. Chairman, or any of the Members may have.

Chairman GIBBONS. Thank you, Mr. Stackhouse.

Mr. Russell.

STATEMENT OF RANDY RUSSELL, VICE PRESIDENT, AGRICULTURAL AND TRADE POLICY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. RUSSELL. Thank you, Mr. Chairman.

Mr. Chairman, being the ninth person to testify this morning in favor of the Wine Equity Act reminds me of my collegian baseball days where I was a catcher with a good glove and not much of a stick, so I know all about that batting ninth.

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[7] See Wine Institute and Department of Commerce statistics.

[8] Bureau of Alcohol, Tobacco and Firearms, Statistical Release, Sept. 12, 1983.

Mr. Chairman, my name is Randy Russell and I am vice president of the National Council of Farmer Cooperatives. The national council is a nationwide trade association representing cooperative businesses which are owned and controlled by farmers.

The national council represents about 90 percent of the more than 6,200 local farmer cooperatives in the Nation with a combined membership of nearly 200 producers. Mr. Chairman, on behalf of our cooperative membership I want to thank you and the other members of the trade subcommittee for holding this hearing today.

It is indeed a pleasure to testify on behalf of the national council in support of the Wine Equity Act. In recent years the U.S. wine industry has gained worldwide recognition as a leader in producing high quality wines at reasonable prices.

However, despite this fact the industry has been unable to successfully market U.S. wines overseas due to a number of restrictive and prohibitive trade barriers imposed by key foreign customers. The serious trade imbalances which historically had occurred within the U.S. wine industry is directly related to the easy accessibility enjoyed by foreign wines into the U.S. market contrasted with the import barriers faced by American wine exporters.

The U.S. duties on imported table wines are among the lowest in the world averaging about 37.5 cents per gallon, and as has been pointed out this morning there are a number of countries which impose far greater duties such as Japan at $4.80 per gallon, the United Kingdom at 81 cents a gallon, West Germany at 77 cents per gallon.

In addition, U.S. wine is restricted from entering a number of key foreign markets due to the imposition of nontariff trade barriers. Mr. Chairman, the U.S. wine industry is not asking for a subsidy program aimed at increasing foreign consumption of U.S. wines.

However, the industry is asking that U.S. wines entering foreign markets be treated in the same manner as foreign wines that are entering into the United States. The Wine Equity Act introduced by Congressman Tony Coelho and cosponsored by 345 House Members is aimed at addressing these inequities faced by U.S. wine exporters.

Specifically, the bill requires the Office of the U.S. Trade Representative to make a determination of all countries who produce and export wine. Following this determination USTR is directed to begin negotiations with each designated country in an effort to reduce the tariff and nontariff barriers to a level substantially equal to those imposed by the United States.

If the designated country does not reduce its tariff and nontariff barriers to such a level to those imposed by the United States within 180 days the President must impose tariff and/or nontariff trade barriers equal to those imposed by the designated country on U.S. wine entering its market. Mr. Chairman, the National Council of Farmer Cooperatives throughout its 54-year history has been a strong supporter of free and fair trade.

The Wine Equity Act is consistent with the council's philosophy of expanding U.S. agricultural exports by creating a fair trade environment for U.S. wine. For this reason the National Council strongly supports the Wine Equity Act and encourages this committee's support of the bill.

In addition, Mr. Chairman, I would like to make a comment relating to something said earlier this morning by Mr. Hathaway from USTR. He stated that the administration could not support legislation aimed at handling reciprocity initiatives on a case-by-case basis.

He referred to possible retaliation against U.S. agricultural trade sectors if this were done. Mr. Chairman, I would like to point out the fact that this is exactly what the administration has done in the area of agricultural trade over the last 12 months.

We have seen two basic initiatives take place over the last 12 months. One was an announcement of a wheat flour export subsidy program by the Department of Agriculture aimed at gaining back a large share of the U.S. flour market. The other was a 28,000 metric ton dairy product sale to the Egyptians under the Public Law 480 program.

Secretary Block has stated in his own testimony time and time again before the Agriculture Committee in both the House and the Senate that he wants to approach the issue of subsidies on a case-by-case basis and on a commodity-by-commodity basis.

I think this bill points out the fact that the wine industry definitely wants to compete on a fair and free trade basis, and because of this the national council is strongly in favor of the bill.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF RANDY M. RUSSELL, VICE PRESIDENT, AGRICULTURE AND TRADE POLICY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. Chairman, my name is Randy M. Russell and I am vice president, Agriculture and Trade Policy of the National Council of Farmer Cooperatives. The National Council is a nationwide association of cooperative businesses which are owned and controlled by farmers. Our members handle practically every type of agricultural commodity produced in the United States, and market these commodities domestically and abroad. The National Council represents about 90 percent of the more than 6,200 local farmer cooperatives in the Nation, with a combined membership of nearly 2 million producers.

Mr. Chairman, on behalf of our cooperative membership, I want to thank you and other members of the Trade Subcommittee for holding this hearing today. It is indeed a pleasure to testify on behalf of the the National Council of Farmer Cooperatives in support of H.R. 3795, the Wine Equity Act.

In recent years, the U.S. wine industry has gained worldwide recognition as a leader in producing high quality wine at reasonable prices. However, despite this fact, the industry has been unable to successfully market U.S. wines overseas due to a number of restrictive and prohibitive trade barriers imposed by key foreign customers'

In 1982, total U.S. wine consumption reached 512 million gallons. However, wine imports of 122 million gallons made up about a fourth of all the wine consumed in the United States in 1982. In the case of table wines, which make up about 80 percent of all the wines consumed in the United States, the import situation is even more dramatic.

The U.S. consumed 397 million gallons of table wine in 1982. Of this, 105 million gallons or 26.4 percent was imported. This represented a 14 percent increase in the level of foreign table wines that were consumed in the United States from just one year ago.

This large increase in wine imports has had a serious impact on the U.S. balance of payments. In 1982, the U.S. imports of foreign wines totaled $781 million, while the value of U.S. wine exports only reached $38 million. This led to a 1982 wine trade deficit of $743 million, which accounted for over 2 percent of the entire mechandise trade deficit.

The serious trade imbalance which historically has occurred in the U.S. wine industry is directly related to the easy accessibility enjoyed by foreign wines into the U.S. market contrasted with the import barriers faced by American wine exporters. U.S. duties on imported table wines are among the lowest in the world, averaging 37½ cents per gallon. This can be contrasted with the much higher duties imposed by other countries, including:

Japan—$4.80/gallon.
United Kingdom—$0.81/gallon.
West Germany—$0.77/gallon.
France—$0.69/gallon.
Italy—$0.67/gallon.

In addition, U.S. wine is restricted from entering a number of key foreign markets due to the imposition of non-tarriff trade barriers. Examples of these include: certification requests (EEC, Mexico, and Venezula), license and quota systems (Austria, Switzerland and New Zealand) and government and provincial monopolies (Canada and Sweden).

These two disadvantages which U.S. wine exporters face in the world market were clearly pointed out in the U.S. Trade Representatives' study of the impact of foreign wine importers on the U.S. wine industry completed in 1981. The study stated:

"Of the government-imposed obstacles to wine trade, tariff and nontariff barriers are both significant. Tariffs and internal taxes combined are frequently a prohibitive factor for the importer of U.S. wines. Examples of countries with high tariffs are Japan, Korea and Sweden. In contrast, U.S. tariffs and taxes are among the lowest of the world's wine producers.

Nontariff barriers which hamper U.S. exports of wine include certification requirements (e.g. European Economic Community (EEC), Mexico, Venezuela), license and quota systems (e.g. Austria, Switzerland, New Zealand), government/provincial monopolies (e.g. Canada, Sweden), and process, bottling and labeling requirements (present to some degree in all producing countries). The industry has also complained about customs delays for U.S. wine shipments, and the EEC reference price system for wine."

Mr. Chairman, the U.S. wine industry is not asking for a subsidy program aimed at increasing foreign consumption of U.S. wines. However, the industry is asking that U.S. wines entering foreign markets be treated in the same manner as foreign wines that are entering into the United States. The Wine Equity Act, introduced by Rep. Tony Coelho, and co-sponsored by 345 House members, is aimed at addressing the inequities faced by U.S. wine exporters. Specifically, the bill requires the Office of the U.S. Trade Representative [USTR] to make a determination of all countries who produce and export wine. Following this determination, USTR is directed to begin negotiations with each designated country in an effort to reduce the tariff and nontariff barriers to a level substantially equal to those imposed by the United States. If the designated country does not reduce its tariff and nontariff barriers to a level equal to those imposed by the United States within 180 days, the President must impose tariff and/or nontariff barriers equal to those imposed by the designated country on U.S. wine entering its market.

Mr. Chairman, the National Council of Farmer Cooperatives, throughout its 54 year history, has been a strong supporter of free and fair trade. The Wine Equity Act is consistent with the Council's philosophy of expanding U.S. agricultural exports by creating a fair trade environment for the U.S. wine industry. For this reason, the National Council strongly supports the Wine Equity Act and encourages this Committee's support of the bill.

Chairman GIBBONS. Thanks to all of you. Before we go into discussion let me point out for some who just recently entered the room an announcement that I made earlier. Oh, excuse me. We have one more witness, Mr. Gerold from Pennsylvania.

STATEMENT OF ARTHUR GEROLD, PRESIDENT, PENNSYLVANIA WINE ASSOCIATION

Mr. GEROLD. My name is Arthur Gerold. I am the president and owner of Bucks Country Vineyards in New Hope, PA, and president of the Pennsylvania Wine Association. While Pennsylvania is probably at the moment not in a league with our colleagues from New York and California it is a growing industry and the Wine Equity Act is a great concern to us.

In terms of production, of course, the Pennsylvania wineries are small in comparison, and since we are small we are sensitive to changes in the economic conditions of the marketplace and while wine consumption in the United States has been increasing over the past few years most of that has been represented by the imports of wine into this country, inexpensive foreign imports incidentally. One of the reasons for the tremendous growth of imports is the easy access foreign wines have to our American market.

The United States duty as everyone has pointed out on table wines is the lowest of any significant wine-producing nation in the world, and even though we are small and we are only 12 years old with the passage of the Farm Winery Act in 1970 which enabled us to start to even make wine in Pennsylvania we have not sought any special considerations or subsidies from our Government.

While I am not an international wine or trade expert I do not try to understand all of the international agreements and legal machinery that has brought us to our present difficult situation, I do know that given a fair market in which to compete American wine producers will be able to sell their quality products because we are suffering a difficult period with sales that are off and inventories that have been inordinately high and because it just does not seem fair to me that the United States should be such an open and free market for producers from all foreign countries.

In return our exporters are faced with a maze of complicated rules and regulations which makes importing and exporting almost virtually impossible. I urge your positive support for this Wine Equity Act.

We need to send a message to our foreign trading partners that we expect international trade to be as fair as well as free.

Thank you, sir.

[The prepared statement follows:]

STATEMENT OF ARTHUR GEROLD, PRESIDENT, PENNSYLVANIA WINE ASSOCIATION

My name is Arthur Gerold. I am the president and owner of Bucks Country Vineyards in New Hope, Pa., and the president of the Pennsylvania Wine Association, representing the wineries located in the Commonwealth of Pennsylvania.

In terms of volume of production, the Pennsylvania wineries are small, we are therefore more sensitive to changes in the economic condition of the market place. It is extremely important that competition be fair and that markets remain open to all levels of producers. Like any small business in the United States, we seek only equal conditions to those imposed on other producers and a fair opportunity to sell our product.

Wine consumption in the United States has been growing over the past several years, but we have found in our State that inexpensive foreign imports have supplied most of that growth. One of the reasons for the tremendous growth in imports is the easy access foreign wines have to our market. United States duty on table wine is the lowest of any significant wine-producing nation in the world, and there are no non-tariff barriers since foreign wines are subject only to the same laws and regulations which apply to American wines.

Even though we are small, we have not sought subsidies or special considerations from our governments. We do not feel that the American taxpayer should be called upon to assist our industry through subsidies if it can be avoided. We are not interested in restricting imports as a means of increasing price or market share since our consumers are entitled to the widest possible choice including choice in price.

By comparison, a recent Agriculture Department study has confirmed that Italian wines are being substantially subsidized, which makes it possible for them to be sold in our market at a price far lower than their actual cost to produce. Low cost Italian wines make up the bulk of the import market that has supplied the growth in wine consumption in the United States, and such practices of subsidizing to gain market share do not seem fair to us. At the same time that foreign governments are subsidizing wine production, the same governments maintain tariff and non-tariff systems that effectively restrict and limit the export of American wines to those markets—an attitude that sounds very much like "what is mine is mine, and what is yours is mine, too."

I am not an international trade expert and do not try to understand all of the international agreements and legal machinery that has brought us to this difficult situation. I do know that given a fair market in which to compete, our modern and efficient wine producers will be able to sell their quality products. Because we are suffering a difficult period with sales that are off and inventories that are high, and because it just does not seem fair to us that the United States should be such an open and free market for products from all foreign countries and in return our exporters are faced with a maze of complicated rules and regulations, in some cases virtual prohibitions. Mr. Chairman and members of this Subcommittee, I urge your positive support for the Wine Equity Act. We need to send a message to our foreign trading partners that we expect international trade to be fair as well as free. An equitable solution is what is needed and I hope you will provide that solution.

Thank you. I am available to answer any questions that you may have.

Chairman GIBBONS. Thank you, sir. I apologize for having passed you over.

We received notice a few minutes ago that the full Ways and Means Committee would be meeting at 2:30. The rules of the committee do not allow us to meet while the full committee is meeting.

The full committee is taking up some end-of-the-year legislation involving taxes of around $8 to $12 billion over the next 3 years so it is with regret that we must announce that we are not going to be able to go much longer this afternoon. It looks to me like we will be able to finish the wine issue, but I doubt that we will be able to get to anything else today which means we will have to go over until the Congress next convenes which I imagine is late January or early February the way the things are breaking right now.

I had not anticipated that when we called this meeting today, and so to the extent that anyone has been inconvenienced I apologize. But we are anxious to get to your problem and to try to solve it. We will be back in touch with you.

I imagine we are going to quit after we get the next set of witnesses.

All of you have mentioned the problem that you are dealing with, subsidized foreign competition. Have you taken any action under American laws in that regard to protect yourself against this kind of competition?

Mr. WEIDERT. Mr. Chairman, the American Grape Growers Alliance, in looking at the various alternatives, has determined that in the early stages of its existence we will be looking at the remedies available, yes.

Chairman GIBBONS. How about the rest of the panel?

Mr. SILVERMAN. Mr. Chairman, I would like to respond to that in this way. When we looked at the problems that we faced abroad and the tremendous amount of subsidized wine coming in here we felt legislatively we might have gone one of two ways.

There was a good deal of support that we noticed in the Congress that would have said why not prohibit the wines of any country from selling in this country where that country subsidized their wines in the United States or in a third country. We purposely rejected that approach. We thought it had a protectionist tinge and we did not want to be in the position of confusing subsidies coming in here with some people possibly thinking we were asking for subsidies.

This bill is an export bill. As far as administrative remedies go, we have looked at that possibility. Very frankly, we have not pursued them yet. We are looking right now only at market access in terms of this legislation and we simply want to be able to market our product abroad in a fair way.

Chairman GIBBONS. Have any of the rest of you tried to take any action against subsidized trade?

Mr. STACKHOUSE. Mr. Chairman, not directly, but my association in meeting with the Province of Ontario, Canada, winemakers were instrumental in getting the 65-cent-a-bottle excise tax into the Ontario Province that they had slapped on U.S. wines eliminated because they wanted some help in this matter. I think it is a matter of many wineries in countries that are not export wine producing countries at the present time have the same problem.

I know in talking with the Canadians they went to their government. Their government went to Italy in particular, and the Italian Government said we do not subsidize our wine, and that is as far as it got.

It is a very difficult problem when you are dealing with these people. On the other hand, we like you, sir, are always looking for votes and our vote is when a consumer picks a bottle up off the shelf and when the other one is cheaper because he has got an unfair advantage we lose the vote.

Mr. WEIDERT. Mr. Chairman, if I might just add a bit to what I said in response to your question before. The raisin industry as you may know has filed a 301 case under the GATT agreement, and that is still pending and has been for 2 years now.

The USDA study that was just released would lead us to believe that there is substantial evidence that there are indeed unfair subsidies existing in the wine trade coming into this country today. We are in the process of assembling additional data and studying what is available and looking at the possibility, and the decision has not been made yet of moving forward in that area.

Chairman GIBBONS. I recognize that most of your associations are relatively young, association-wise, and that perhaps as you mature you will find that there are other remedies here, and we would like for you to pursue those remedies as vigorously as you are able to help us establish what is going on in these areas.

Have any of you examined our present trade remedies law and come to the conclusion that you could not proceed under them or is it just something you have not gotten around to?

Mr. CLAWSON. Mr. Chairman, if I may, the industry has looked at some of the trade remedy laws. I think it is a little of both of what you said. They will be getting around to some of them to use your terms, but more importantly, most of the existing trade remedy laws authorize remedies that will restrict imports into this country.

The current thinking of the industry is that they do not want to limit the choice of the consumer. They do not want to raise the price to the consumer because, as Mr. Stackhouse said, that is their constituency. What the industry is looking for is equal treatment worldwide to be able to sell their goods abroad. This legislation has been directed as an export initiative and even though the trade remedies that you speak of are there, the wine industry is reluctant to use them.

Chairman GIBBONS. All right. Do any of the rest of you have any views you would like to state on that subject?

[No response.]

Chairman GIBBONS. All right.

Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I want to thank all of the gentlemen for their testimony and particularly welcome our friend Mr. Clawson back before the committee. It is always a pleasure to have you here and we remember well your very lonely duty in Brussels and are appreciative of it.

I was surprised as the chairman was that nearly each of you mentioned the terrible subsidy burden that you are carrying and yet none of you have started a countervailing duty case. Does anybody want to comment on why that has not happened? Is it easier to try to change the law than to prove an injury?

Mr. SILVERMAN. I would comment, Mr. Frenzel, in this way. For a long time it has been very difficult to determine just what is a subsidy.

We would allege subsidies and foreign governments would come back and indicate there is not a subsidy. For the first time, and this has been alluded to, we have a document prepared by the U.S. Department of Agriculture in which at least as far as Italy is concerned—I understand they will be going back very soon to Germany and maybe one or two other countries, France, I believe—in which specific subsidies are detailed and set out.

I would also point out as I tried to in response to Mr. Gibbons question that we really are export conscious. We are not trying to stop at all any wines from coming in here.

The U.S. market is totally free and it has always been totally free. We just believe we should have the chance in some type of an equitable and fair way to market our product abroad, and that is the theme that runs through our industry.

Mr. FRENZEL. I think I understand your bill. You are going to lock up the market if you cannot get your friends to cooperate abroad. You are for the consumer until you cannot sell abroad and then we are not for the consumer. Is that right?

Mr. SILVERMAN. Not at all. Our industry as you are well aware has been very consumer conscious.

Mr. STACKHOUSE. Mr. Frenzel, I would like to comment, too, on your question.

Mr. FRENZEL. Please.

Mr. STACKHOUSE. My constituency in my association are very small wineries, and we just cannot afford the dollar burden to try to initiate any type of action of this nor can we afford to pay the tax to put our wine on the shelf in a foreign country at a competitive price. We do not have the money.

This is why we are seeking this type of legislative action.

Mr. **Frenzel**. Well, let me ask the question the other way. The reason I am asking this question is that the industries come to us all the time for preferential legislation. Our normal response is to say go prove you have got an injury somewhere in the tested way. Prove to us that there is a subsidy. Prove to us that there is dumping or even prove that there is a fair trade practice that has honestly injured you before you come forward.

Normally we would pass a bill like this only in extremous when you are hanging on the edge of the cliff and you have no other way to go. You have probably altered the committee's way of operating because you have convinced 340 odd Members and I did not mean to use the word "odd", but 340 different Members of Congress that this is a wonderful idea.

I think, however, that it may be that all 340 are not going to be tried and true when you get down to the final nut cutting, but I think we want to be sure you use the laws we have on the books. To be sure the industry is in some ways small. In other ways it is quite large, and smaller industries and companies than yours have used our trade remedy laws.

I guess I have the nagging suspicion that you are here before us because you cannot prove injury, and you do not dare take the case up.

Mr. **Weidert**. May I address that, sir?

Mr. **Frenzel**. Yes.

Mr. **Weidert**. As a matter of fact, I am not trying to be evasive or vague, but we do not know for certain where we are yet. But the very reason that our organization has come into being—someone addressed cost—that is a factor for any small portion of the industry to handle when you get into these kinds of things.

There has not been an overall umbrella group prior to now that has made an all out effort to bring all segments of the industry together and to bring together the affidavits necessary to do the work that is necessary to prove the case of injury which as you know in a countervailing duties case is the crux of whether you win or lose. We are in the process of looking at all of this.

I, sir, would not be surprised if such a case were filed by the first of the year. I do not guarantee that at this point, but we are moving with dispatch in that direction.

Mr. **Frenzel**. I appreciate knowing that. I feel better about your bill now that you tell me that you are at least considering this.

Mr. Silverman, did you want to make an additional comment?

Mr. **Clawson**. Well, Mr. Frenzel, I just wanted to respond to the extent that of course the industry is not monolithic. There are those that do have injury and those that do not. So I wanted to dispell your view that perhaps we were afraid to go forward because of a fear of not being able to prove injury.

I do not think that has been the issue. As I stated earlier I think the primary concern is that the existing trade remedies provide import relief. While that is one option that is being seriously considered, there does not seem to be anything in our existing trade laws or agreements that allows the industry to address problems like price mark-ups in Canada or minimum reference prices in the European Community.

They are not part of our existing trade agreements. It is the nontariff barrier area the GATT has struggled with for years and not very successfully frankly, and I think that has been——

Mr. **Frenzel.** I think I understand that. The reason I spoke up is that CVD is the easiest, quickest remedy we have got. Almost every witness said we have got a subsidy problem, and yet you have not attacked the subsidy problem.

That is what was concerning me. I wonder if I might ask a couple of volunteers on the panel to tell me how competitive American wine is in today's international markets absent the barriers about which you complain.

Mr. **Silverman.** This bill is seeking to give us the opportunity to compete abroad. I think a good example would be the United Kingdom. Now you must remember we are here because we can substantiate tariff and nontariff barriers that affect our wines.

In the United Kingdom we were making fairly substantial inroads in the last few years although on a very low base. What has happened, and I alluded to this in my earlier testimony, is that the reference price system, in effect, a minimum price whereby you must come in above that price or be subject to a countervailing duty, was used to deter sales.

As the sales increased in the United Kingdom for a particular American winery that was importing wine at double the minimum reference price, the wine was suddenly subjected to countervailing duties. This was done even though the EEC waived the reference price as to wine for 19 other countries.

We feel that we have certain markets where we can be very competitive. The Benelux countries. Certainly Germany and the United Kingdom fall in that category. There are many other countries abroad in which we feel we can be competitive.

We simply ask the opportunity. Just give us the opportunity to market our product abroad. We do not think that is too much to ask this Congress. We think we ask it in a very fair way.

We have been through the multilateral approach. We have been here so many times and nothing seems to happen. They tell us to wait our turn, and we wait and we wait and nothing happens, and we think this is a very fair bill. It is an export bill. It is not a subsidy directed bill as you know.

It speaks merely to tariff and nontariff barriers. Just give us the opportunity to sell our product. Give us the access, sir. That is all we ask.

Mr. **Frenzel.** I thank you for your statement, and before I sign off I just have to repeat what I said earlier that you were not always so quiescent about subsidies. You were fairly outspoken in 1979 and very effective I might say.

Mr. **Silverman.** I do not understand that, sir. I am sorry.

Mr. **Frenzel.** Well, we changed the law under which spirits were taxed. The excise tax on spirits in the United States at the request of the wine industry and other producers.

Mr. **Silverman.** That affected only distilled spirits as I understand it, Mr. Frenzel. You are referring to the all in bond system. That did not affect the wine industry at all. That merely affected the distilled spirits industry and the only situation that affected the wine industry was a subsequent remedial bill whereby wine which was used in distilled spirits had traditionally been taxed at the wine rate through a mistake was subject to the distilled spirits tax.

Mr. **Frenzel**. Yes. That is what I was referring to, the alleged mistake which was later passed to trail the 1979 Act.

Mr. **Silverman**. The Congress found that to be a mistake, a congressional oversight.

Mr. **Frenzel**. May I say you were very aggressive in seeing that the oversight was called to our attention.

Mr. **Stackhouse**. Mr. Frenzel, if I could expound on your question, we have a member in Wisconsin who is aggressively pursuing marketing his product in the United Kingdom and in Western Germany. He has people over there who will bring the wine in and market it.

They feel it is as every bit competitive except for one area, price, and the price comes down for exactly what we are saying. These tariff barriers are such that he would have to give the wine away to get it over there.

Now he cannot stay in business that way, and this is the type of thing that we are asking about.

Mr. **Frenzel**. What is the tariff in Germany?

Mr. **Stackhouse**. Off the top of my head, sir, I could not say but they are being part of the economic community. They have that same base reference price, and it is considerably high and he has to double it and his wine ends up on the market over there at about $12 to $14 a bottle I believe where to be competitive it has to be down in the $5 to $7 range. It is strictly tariff costs that drive it up that high.

Mr. **Frenzel**. Thank you very much.

Mr. **Clawson**. Mr. Frenzel, there is another example of which I am aware and I can supply others to your office as well. There is one California producer who is prepared to sell not a bottled wine but a bulk wine at 25 cents a liter to Japan, red or white. This is more competitive price-wise than what the Spanish are currently selling. Spain is the largest bulk shipper to Japan. Spain happens to enjoy GSP treatment from Japan and does not have to pay the duty, the taxes and, therefore, our shipper is not competitive just strictly on price.

Mr. **Frenzel**. Fine. Those kinds of examples would be helpful, and if you would provide them for the record we would love to have them.

Thank you very much, gentlemen.

Chairman **Gibbons**. Are any of you aware of a country-by-country comparison of the U.S. barriers versus those other country barriers? Is that available somewhere?

Mr. **Clawson**. Yes, Mr. Chairman. The section 854 study that was referred to several times throughout the day is the basic Government document. Now part of that was prepared in conjunction with the industry. In 1975 the industry submitted to the USTR a very comprehensive list of all of these barriers which is still available along with the 854, and they are quite compatible. There is not a great deal of difference between the two.

Chairman GIBBONS. All right. I wonder if during the recess period if you would try to get those to us so that we may analyze those studies.

Mr. CLAWSON. We will submit all of that to you.

Chairman GIBBONS. I would appreciate that. I hate to ask you for a Government document, but there are so many of them around, one cannot lay their hands on one.

Mr. CLAWSON. We would supply copies to the USTR for their use as well.

Chairman GIBBONS. Now I said I would get the people from the panel that are opposed to this bill, but we are right up toward the time that we are going to be in violation of the committee and House rules. I do not think it is fair to put these people on.

We have given you all about 3 hours, and we are going to give them less than 9 minutes. So, in order to be fair I am going to have to suspend the hearing at this time and tell the opposition we will be glad to hear from you and I hate to say next year but that is what it looks like. We will not be taking these matters up again until next year, the way the current schedule is unfolding.

So, with that regretful note this committee meeting is adjourned for the day and subject to the call of the Chair. We will have to ask all of you to come back and finish this discussion.

The meeting is adjourned.

[Whereupon, at 2:20 p.m., the hearing adjourned to reconvene at the call of the Chair.]

[Submissions for the November 15 hearing record follow:]

WRITTEN COMMENTS

H.R. 2471

To apply duty-free treatment with respect to articles exported for purposes of rendering certain geophysical or contracting services abroad and returned.

STATEMENT OF HON. LINDY BOGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. Chairman, I appreciate the Subcommittee's consideration in scheduling this hearing on H.R. 2471, a bill to apply duty-free treatment to certain articles exported for purposes of rendering geophysical or contracting services in connection with the exploration, extraction or development of natural resources abroad and subsequently returned to the United States.

Earlier this year I became aware of a problem faced by domestic companies engaged in worldwide service operations in support of offshore petroleum exploration and development. In a number of instances, these companies have purchased foreign-manufactured equipment with unique operating and performance characteristics. This equipment is used in both domestic operations and in foreign operations by these American companies.

American companies owning and operating the equipment are expected to comply with existing tariffs on imported goods and must pay duty on this foreign-manufactured equipment. However, under current law as interpreted by the U.S. Customs Service and the courts, each and every time the equipment in question is returned to the United States after conclusion of a job abroad, the company that owns and operates the equipment is liable for import duty—notwithstanding that duty was paid upon the first importation of the equipment into the United States.

It seems to me and to others who have contacted me regarding this matter that the multiple imposition of duty is not only inequitable, but also, and more importantly, impedes the ability of American companies to be competitive in the provision of services abroad with companies based in England, France, Germany and other countries. As a result of the imposition of multiple duty on its electronic equipment, one company that is located in my District and that provides precision positioning navigation services in support of exploration and development of offshore petroleum resources is penalized in attempting to compete with foreign-based firms in the amount of $10–$12,000 per job—the amount of duty it must pay for each reentry of its equipment.

Customs law, as set forth in the Tariff Act of 1930, does not provide a general exemption from the assessment of duty on commodities which previously were imported into the United States and for which duty was paid. The Act specifically provides that the dutiable status on an article is not affected by the fact of prior entry and payment of duty; however, duty-free reentry status is afforded to certain narrowly defined categories of commodities such as personal effects and certain specified classes of commodities utilized temporarily abroad.

The purpose of H.R. 2471 is to allow duty-free reentry of foreign-manufactured articles being returned to the United States after having been exported for use temporarily abroad in conjunction with rendition of geophysical or contracting services in connection with the exploration for or extraction of or development of natural resources provided (1) that the duty previously has been paid upon importation of the equipment, and (2) that the equipment is imported into the United States by the party who caused its exportation. Accordingly, this legislation would only serve to relieve parties of multiple application of duty, not the initial payment of duty, and thus would facilitate the international service operations such as are provided by a number of companies on the Louisiana-Texas Gulf Coast. This proposal is consistent with other provisions of the Tariff Act which allow duty-free reentry of goods temporarily exported.

Mr. Chairman, I urge favorable action by the Subcommittee on H.R. 2471.

STATEMENT OF GEORGE A. ROUSSEL, VICE PRESIDENT, GENERAL MANAGER, OFFSHORE NAVIGATION, INC.

I very much appreciate the opportunity to present this statement on behalf of Offshore Navigation, Inc. in support of H.R. 2471 which looks toward allowing duty-free reentry of equipment utilized in the rendition of geophysical or contracting services in connection with the exploration for, or extraction of development of, natural resources.

Offshore Navigation, Inc. ("ONI") renders highly specialized engineering services to the offshore petroleum industry. Specifically, ONI provides precise positioning for the movement of vessels and platforms utilized in surveying and developing offshore tracts and in the production of gas and oil. Our services also are used for many other purposes, including calibration of the navigational systems aboard the atomic and nuclear submarine fleet, photomapping, dredging, underwater pipelaying, and similar operations where precise positioning or position information is required. In terms of precision, and repeatability, we have the capability of accuracies within 20 feet at ranges of more than 100 miles from shore on an around-the-clock basis.

ONI operates worldwide. We have provided radio-positioning service in more than 100 countries throughout the world. Our headquarters is located in Harahan, Louisiana, outside of New Orleans, at which we maintain both our corporate offices and our prime operational base from which we service and supply our worldwide operations. In providing precise positioning services to the offshore petroleum industry and other customers, we utilize a variety of electronic aides. Most equipment is of American manufacture; and we, ourselves, have developed a new system capable of maintaining precise position control at ranges in the vicinity of 300 miles from shore on an around-the-clock basis.

Included in our inventory is equipment manufactured abroad. The choice of the particular system or systems to be utilized on an individual job is based on the requirements of the job and the performance of the equipment. Also, many customers specify the system to be used in particular operations; and the level of acceptance of any particular system varies among the clients. Each radiopositioning system has particular strengths and weaknesses, and the foreign manufactured equipment is utilized because it has certain performance capabilities not found in equipment of domestic manufacture.

As a service contractor operating both domestically and abroad, and using the same inventory of equipment for domestic and foreign operations, we are faced with the requirement of paying duty on our foreign manufactured equipment each and every time we return that equipment to Harahan after completion of a job abroad. Although duty was paid upon the initial importation of the equipment, either by ourselves directly or by the importer when we purchase through a U.S. distributor, duty again is payable on each and every subsequent importation.[1] At the 7.5% rate of duty applicable to much of our electronics, and with system costs reaching $250,000 the duty payable in conjunction with foreign use of certain systems may amount to almost $19,000 each time we return a system after use abroad.

The rendition of positioning service to the offshore petroleum industry is highly competitive. Major foreign operators include Prakla, the Companie Generale de Geophysique (CGG), and Racal-Decca Survey Systems. Competition with these firms, each of which is a subsidiary of a major European-based corporation having substantial financial resources, and with a variety of smaller foreign companies, is quite intense. These companies enjoy some cost advantage by virtue of their location closer to the operating areas of the North Sea, the Middle East and Africa; and where the use of a foreign manufactured positioning system is most appropriate to the job, our foreign competitors enjoy a signficant cost advantage by virtue that we are liable for the payment of duty on the return of the equipment to the United States after job completion.

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[1] The headnote to Schedule 8, Special Classification Provisions, Part 1—Articles Exported and Returned, Headnotes, Tariff Schedules of the United States, 19 U.S.C. § 1202, provides, as follows:

1. In the absence of a specific provision to the contrary, the tariff status of an article is not affected by the fact it was previously imported into the customs territory of the United States and cleared through Customs whether or not duty was paid upon such previous importation.

Precise positioning is only one of many contract services utilized in oil and gas exploration and development. We are aware that many service companies engaged in operations downstream from our operations experience this same situation.

We recognize the appropriateness of payment of duty on the initial import of foreign goods into the United States; however, we believe it is grossly unfair to require that we pay duty on each and every reimport after a foreign job for which we use foreign manufactured equipment. In no other country of the world do we experience this problem, and our competition is not faced with this cost burden should they choose to use American manufactured equipment in their service operations. It is our understanding that the Tariff Schedules apply in this fashion not to further trade policy but rather as a matter of administrative convenience to the Customs Service.

There are two types of procedures under the Customs law by which we can effect duty-free reimportation. One series of procedures allows restricted entry of our equipment, such as for repair and calibration; however, we cannot use the equipment in our domestic service operations. ONI is not large enought to afford the luxury of separate domestic and foreign inventories of this costly and highly specialized equipment. The other import procedure, recognized by the Customs Service, permits us to have the equipment entered as the "tools of trade" of an employee upon his or her arrival in the United States.[2] This procedure also requires that the employee travel with the equipment, and that the exportation be made in the employee's name. While the "tools of trade"procedure allows duty-free reimportation without restriction upon domestic use, it is costly and quite cumbersome because it requires an employee to travel with the equipment, and such travel otherwise is unnecessary since we often operate with foreign-based crews. We believe we should be able to achieve this same result directly and that tariff application should not force us to employ such burdensome and costly procedures.

The amendment introduced by Mrs. Boggs in H.R. 2471 would allow duty-free reentry of equipment utilized in conjunction with the rendition of geophysical or contracting services in connection with the exploration for or extraction or development of natural resources. Under the tariff, the articles must be imported by or for the account of the person who exported them; and acccordingly, duty would have been paid in conjunction with the prior ownership of the equipment in the United States. Additionally, only the exporting party could take advantage of this provision. Duty-free reentry similarly is provided for other articles, under Items 802.10 through 802.40 of the Tariff Schedules of the United States; and certain of those provisions apply, in cases similar to ours, to entitites which utilize the exported and returned articles on a temporary basis abroad for commercial purposes.

We believe that appropriate procedures can be devised by the Customs Service to implement this provision. Equipment can be identified by serial number, or otherwise, upon exportation; and the burden of proof for qualification for duty-free reentry would be upon the importing party. We believe these procedures would be no more difficult or cumbersome than "drawback," whereby a party who has paid duty upon an imported article may secure a refund of that duty upon subsequent exportation provided that the article has not been utilized while in the United States. It would appear that these two procedures are almost functionally reciprocal of one another; and whereas the Customs Service administers the drawback provisions currently, it certainly can administer the proposed duty-free reentry provision.

We are not seeking special favors or dispensation from the application of duty. Rather, we believe that payment of duty upon an article once is sufficient to meet the purpose and intent of the Customs law. What we are seeking in supporting this legislation is the removal of an unfair barrier to our ability to compete in the international marketplace which we suffer by virtue of the multiple application of duty.

We appreciate your consideration of this bill and of our views.

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[2] Item 810.20, Tariff Schedules of the United States, 19 U.S.C. § 1202.

H.R. 2641

Relating to the tariff treatment of precious stones exported for processing abroad into jewelry solely for the personal use of the exporter.

No comments were received on this bill.

H.R. 2667

To suspend until July 1, 1988, the duty on yttrium bearing ores, materials and compounds containing by weight more than 19 percent but less than 85 percent yttrium oxide equivalent.

STATEMENT OF HON. WILLIAM M. THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to testify in support of H.R. 2667, a bill which will suspend, until July 1, 1988, the import duty on yttrium-bearing concentrates, materials and components. I believe H.R. 2667 is important to ensure the continued competitive viability of the U.S. refined yttrium oxide market.

Imported yttrium concentrate is used as feedstock in the refining of yttrium oxide. Yttrium oxide has important classified defense-related applications, as well as a wide range of commercial uses. Commerical products include lasers, refractory insulating materials, strategic superalloys, energy-saving flourescent lights and components for color televisions sets.

There are no domestic sources of yttrium concentrate feedstocks so my bill will not impact that segment of the industry. Even though U.S. refiners will continue to depend on imported yttrium as a feedstock, we must continue to encourage domestic refining because of yttrium's significant defense related applications and its necessary commercial uses. If companies cannot profit from refining yttrium, we risk losing our domestic refining capability and a small number of highly skilled jobs.

Currently, the U.S. imposes a 6.3 percent duty on yttrium concentrates. In the U.S. today there are two U.S. refiners that are dependent on the imported yttrium for feedstock in their facilities. These refiners face a competitive disadvantage with foreign refiners who have access to duty-free feedstocks. My bill addresses this problem by relieving the financial burden imposed by the U.S. import duty. Major foreign competitors are the Japanese, French and Norwegians. These companies, some of which are owned in part, by their respective governments, are able to purchase yttrium concentrates, refine it into pure yttrium oxide and export it to the U.S. at a much lower price than U.S. refiners. Production cost margins are so narrow that removal of the import duty will restore the U.S.'s competitive position. In the past decade, two yttrium refiners have permanently closed. Only two remain: Molycorp, Inc., a wholly owned subsidiary of the Union Oil Company of California; and the Research Chemicals Division of the Nucor Corporation in Phoenix, Arizona. We must not lose these two remaining refiners.

The International Trade Commission has reviewed H.R. 2667 and supplied Congress with an objective analysis of the domestic yttrium market. They confirm that U.S. refiners depend on imports of foreign yttrium concentrate to maintain refining capability. To my knowledge, the bill is non-controversial and the Administration does not object. The estimated amount of duty paid by the two U.S. processors of yttrium is under $100,000 per year.

Mr. Chairman, in order to allow a fair competitive position for our domestic yttrium market, it is important to allow non-dutiable access to yttrium feedstocks. I urge the Committee to favorably report H.R. 2667.

MOLYCORP, INC.,
Los Angeles, CA.

Hon. SAM GIBBONS,
Chairman, Subcommittee on Trade, Ways and Means Committee, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your invitation to present testimony on H.R. 2667 which amends the United States tariff schedule to suspend the import duty on yttrium feedstock for 5 years. I respectfully request that my comments be included in the subcommittee's hearing record.

High-purity yttrium oxide has significant commercial and national defense applications. Yttrium aluminum garnets and yttrium iron garnets are vital in classified military applications. Additionally, yttrium oxide is used in lasers, refractory insulating materials, strategic superalloys, energy-saving fluorescent lights, and color televisions.

The two remaining U.S. refiners of high-purity yttrium oxide are dependent on imported yttrium concentrates for feedstocks because there are no significant domestic sources of yttrium. U.S. refiners must compete in the U.S. and export markets with foreign refiners who have access to duty-free feedstocks. The U.S. imposes a duty of 6.3 percent on yttrium concentrates which directly affects our ability to compete in this small, highly competitive market.

Molycorp, Inc., a wholly owned subsidiary of Union Oil Company of California, produces high-purity yttrium oxide in its Louviers, Colorado, plant. The other American refiner is the Research Chemicals Division of Nucor Corporation located in Phoenix, Arizona. Major foreign companies offering high-purity yttrium oxide in the U.S. include the large, French-government-owned company Rhone-Poulenc, China Rare Earths of the People's Republic of China, the Norwegian company Megon, partly owned by the Norwegian government and the Japanese company of Mitsubishi Chemical, and several Japanese processors.

The impact of the 6.3 percent import duty is such that it could force Molycorp, the largest yttrium oxide refiner in the U.S., to cease production. During the past decade, two other yttrium refiners have permanently closed their operations. These plants were operated by Michigan Chemical in Saint Louis, Michigan, and American Potash and Chemical in West Chicago, Illinois. Because of the significance of its military and commercial applications, it is important that the U.S. continue to have a present capability to refine yttrium. The advantages of having a national industry far outweigh the approximately $100,000 duty paid per year by the remaining two processors.

We wholeheartedly endorse H.R. 2667 which seeks to ensure the competitiveness of the American yttrium refining industry and allows American corporations who purchase yttrium oxide from us the guarantee of a continued domestic source of supply. Raw material sources for yttrium include Japan, China, Canada, and Malaysia and are such as to ensure that we will be able to meet our production goals.

We thank you for the privilege of commenting on H.R. 2667 and hope the committee agrees with the merit that we find in the bill.

Very truly yours,

THOMAS B. SLEEMAN,
President.

H.R. 2711

To amend the Tariff Schedules of the United States to impose a one-tenth of 1 cent duty on apple and pear juice.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

SUMMARY

H.R. 2711, Re: Apple Juice

1. The purpose of the small duty increase on apple juice imports is merely to provide a way to place subsidized Argentine apple juice imports into a dutiable category which would enable Farm Bureau to file a countervailing duty petition without the loss of time and tremendous expense of "proving injury" to the domestic apple industry.
2. Over the past seven years, the quantity of apple juice imported into the U.S. has grown from 34 million gallons in 1976 to 104 million gallons in 1982. This represents the equivalent of more than 30 million bushels of apples, a figure greater than an average annual production of Michigan and Pennsylvania.
3. Twenty-three million gallons of the increase are from Argentina, which shipped about 19 million gallons in 1976 and about 42 million gallons in 1982. This quantity alone represents the total annual apple production in the state of Virginia.
4. The Foreign Agriculture Service and other government agencies have the evidence that the Argentine Government does indeed assist the producers and exporters of Argentine apple juice.
5. The apple growers of the U.S. are being hurt badly by the subsidized imports of apple juice from Argentina. These growers need help from their government in order to compete with the subsidized imports from Argentina. We realize that countervailing duty procedures are available, and we plan to exercise such procedures. However, if our farmers must prove injury, this is time-consuming and very expensive, with cost running from $75,000 to several hundred thousand dollars to carry a petition through the necessary procedures.

H.R. 4255, Re: Asparagus and H.R. 2776, Re: Imported Gut Sutures

Farm Bureau opposes H.R. 4255 and H.R. 2776 since these bills unilaterally reduce duty rates on products entered into the U.S. without obtaining a counter concession from our trading partners. Farm Bureau believes that any reduction in duties on products entered into the U.S. should be done in the trade negotiating process rather than done unilaterally without obtaining any trade benefit in return for the reduction.

H.R. 4296, Re: Orange Juice

Farm Bureau supports the addition of two new categories of the duty rate for citrus juice as proposed in H.R. 4296. Under provisions of this bill, duty rate for orange juice "not concentrated" and "other" will remain at the current level, but the new categories will clarify the existing classification so as to prevent entry of concentrated orange juice into a free trade zone for dilution to single strength juice to be entered into the United States at the lower "not concentrated" rate. In other words, this method of avoiding the proper duty on concentrated juices would be remedied.

H.R. 3795, Re: Wine Tariff Adjustments

Farm Bureau cannot support H.R. 3795, which would attempt to raise U.S. duties on wine unless the higher duties, say, of the EEC could be negotiated down to the U.S. level.

The current duty rates on U.S. wine were considered in previous trade negotiating sessions such as the Tokyo Round. EEC countries can argue that they "bought and paid for" the lower duties on U.S. wine with counter concessions to the United States just as we argue with the Europeans that we "bought and paid for" the zero duty on soybeans and corn gluten exports to the EEC with counter concessions.

If the United States were to take unilateral actions to raise the duty on wine imports, the EEC would have another excuse to eliminate the zero-duty bindings on U.S. soybeans and corn gluten exported to the EEC countries.

Adjustments in wine duties are proper subjects for future multilateral trade negotiating sessions.

H.R. 3727, Re: Sugar

Farm Bureau opposes H.R. 3727, which would prohibit the President from imposing import quotas on sugar and repeal existing quotas.

If enacted into law, this bill would destroy the domestic sugar program. Farmers are having a most difficult time staying in business. This bill would further reduce farm incomes and would drive many farmers out of business.

Mr. Chairman, we will appreciate consideration of Farm Bureau's views on these miscellaneous tariff bills.

STATEMENT

Farm Bureau appreciates the opportunity to comment on the following miscellaneous tariff bills which have been referred to the Subcommittee on Trade: H.R. 2711, H.R. 4255, H.R. 2776, H.R. 4296, H.R. 3795, H.R. 3727.

H.R. 2711, Re: Apple Juice

The purpose of the 1/10 of 1 cent per gallon duty on apple and pear juice imports is merely a way to place subsidized Argentine apple juice imports in a dutiable category enabling apple growers or their processing cooperatives to file a countervailing duty petition without incurring the tremendous expense of proving "injury" to the domestic apple industry.

Farm Bureau is keenly interested in the passage of H.R. 2711. This bill was introduced by Congressman Vander Jagt and now has 47 cosponsors.

Over the past seven years, the quantity of apple juice imported into the United States has grown from 34.38 million gallons (single strength equivalent) in 1976 to 103.76 million gallons in 1982. Foreign apple juice is imported in concentrated form for reconstitution in this country. This represents the equivalent of more than 30 million bushels of apples, a figure greater than the average annual production of Michigan and Pennsylvania combined.

Twenty-three (23) million gallons of the increase are from Argentina which shipped 18.86 million gallons in 1976 and 41.95 million gallons in 1982. The quantity imported in 1981 represents 10.67 million bushels of apples, more from Argentina alone than the total annual apple production for the State of Virginia.

The dramatic increase in apple juice imports is a major concern to U.S. apple growers. Their concerns are magnified when we find that the government of an exporting nation is providing a substantial subsidy to the processors and exporters of that product. Farm Bureau finds a willingness of its members to compete with growers in other countries on a fair basis, but they cannot compete with the treasuries of other countries.

The appendix of our statement contains data providing the levels of imports from foreign sources for the period 1965–1983, and the quantities of apples represented by such imports. Also in the appendix is a review of the subsidy schemes provided by the Argentine Government to its apple industry to develop export capabilities.

It is obvious from the information available to us that the Government of Argentina is indeed subsidizing its exports of apple juice into the United States' market to the detriment of U.S. apple growers and processors of domestic apple juice.

The Tariff Schedule of the United States provides a zero (0) duty on apple and pear juice imported from countries which enjoy the "Most Favored Nations" designation. Argentina has been so designated. Imports of apple and pear juice from countries not enjoying "Most Favored Nations" designation are subject to a duty of five (5) cents per gallon under T.S.U.S. Item No. 165.15. Apple and pear juice are the only juice imports free of duty under the M.F.N. category.

Since apple juice currently is not dutiable, the domestic apple juice industry would have to allege and the International Trade Commission would be required to determine "material injury" before a countervailing duty could be put into place to offset the Argentine subsidy advantage. Therefore, the purpose of H.R. 2711 is to impose a minor duty on apple juice imports in order to place Argentina in a category whereby the Department of Commerce could investigate the export subsidies of Argentina with regard to apple juice and, if found to be as alleged, could initiate a countervailing duty action that would offset the Argentine subsidy advantage. This could be done without apple growers having to resort to costly legal fees to take their case before the International Trade Commission to prove material injury to the apple juice industry.

Farm Bureau will encourage those suffering from this practice to seek relief by petitioning the U.S. Department of Commerce to investigate these subsidies and if their findings are positive to instruct the Customs Service to apply countervailing duties as provided under Section 303 of the Tariff Act of 1930.

We urge that H.R. 2711 be approved by your Subcommittee and that it be passed by the Congress to enable U.S. producers to seek relief from the subsidies provided by the Government of Argentina on apple juice exports from their country.

H.R. 4255, Re: Asparagus and H.R. 2776, Re: Imported Gut Sutures

H.R. 4255 would provide for a reduction in duty on certain fresh asparagus.

H.R. 2776 would provide for a reduction in duty on imported gut for surgical sutures.

Farm Bureau opposes H.R. 4255 and H.R. 2776 since these bills unilaterally reduce duty rates on products entered into the U.S. without obtaining a counter concession from our trading partners. Farm Bureau believes that any reduction in duties on products entered into the U.S. should be done in the trade negotiating process rather than done unilaterally without obtaining any trade benefit in return for the reduction.

H.R. 4296, Re: Orange Juice

H.R. 4296 would establish a clearer definition of the intended duties on "concentrated" and "not concentrated" orange juice.

Farm Bureau supports the addition of two new categories of the duty rate for citrus juice as proposed in H.R. 4296. Under provisions of this bill, duty rate for orange juice "not concentrated" and "other" will remain at the current level, but the new categories will clarify the existing classification so as to prevent entry of concentrated orange juice into a free trade zone for dilution to single strength juice to be entered into the United States at the lower "not concentrated" rate. In other words, this method of avoiding the proper duty on concentrated juices would be remedied.

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If the United States were to take unilateral actions to raise the duty on wine imports, the EEC would have another excuse to eliminate the zero-duty bindings on U.S. soybeans and corn gluten exported to the EEC countries.

Adjustments in wine duties are proper subjects for future multilateral trade negotiating sessions.

H.R. 3727, Re: Sugar

Farm Bureau opposes H.R. 3727, which would prohibit the President from imposing import quotas on sugar and repeal existing quotas.

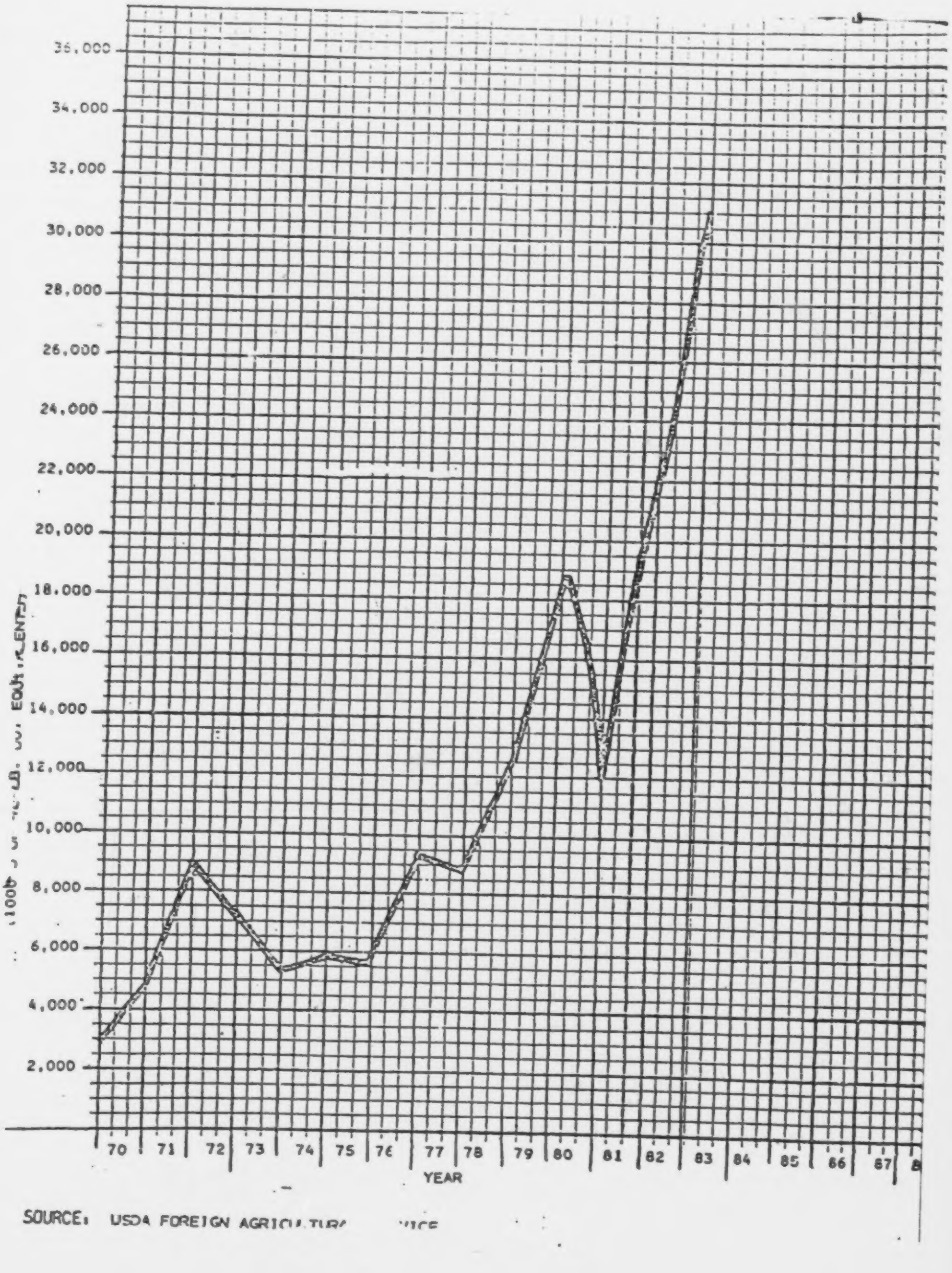
If enacted into law, this bill would destroy the domestic sugar program. Farmers are having most difficult time staying in business. This bill would further reduce farm incomes and would drive many farmers out of business.

Mr. Chairman, we will appreciate consideration of Farm Bureau's views on these miscellaneous tariff bills.

APPENDIX

APPLE JUICE IMPORT BILL

H.R. 2711



SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

with a grace period of two years. (About $10 million U.S. worth of loans were utili
by the CAJ sector.

PREVIOUS LETTERS FROM FAS CABLED FROM ARGENTINA 6-26-81, Joseph F. Somers, AG Counsel

- 1980 GOA established a 10% export rebate for fresh apples and pears.

✓ - January, 1981, interest free loans with repayment of 10 years for CAJ exporters. 24

✓ - February, 1981, export rebates of 10% for all products exported through Patagonian ports. (In April, 1981 this was reduced to 7%)

10-19-81 JAMES V. PARKER - AG Counselor

- June, 1981, CAJ was included in the "value added" products allowing CAJ exporters to exchange 10% of export earnings at the higher financial rate.
- August, 1981, prefinancing covering 60% of the FOB export value of CAJ. Repayment of one year and 1% per annum.

In 1977, Michigan apple grower Jerry Sietsema visited Argentina and toured CAJ plants The plant manager told Mr. Sietsema:

a. The plant, Villa Regina, Argentina, is four years old and is tax free for 10 years (no property tax) because it is an apple juice plant.

b. There is a 10% direct subsidy on every dollar of product sold abroad.

TOTAL APPLE & PEAR JUICE IMPORTS

YEAR	TOTAL GALLONS	TOTAL 42 LB. BU.
1965	5,049,295	1,402,582
1966	3,080,203	855,612
1967	2,535,422	704,284
1968	10,908,738	3,030,205
1969	14,168,506	3,935,696
1970	16 834,532	4,678,759
1971	34,112,513	9,475,698
1972	25,632,907	7,120,252
1973	20,697,580	5,749,328
1974	21,495,957	5,986,623
1975	21,216,285	5,908,737
1976	34,387,544	9,576,259
1977	31,906,859	8,886,058
1978	44,394,152	12,363,770
1979	66,501,098	18,472,527
1980	43,520,365	12,089,324
1981	81,602,668	22,667,408
1982	103,758,056	30,880,374
1983*	63,560,371	18,973,245

*1983 JANUARY - MAY ONLY

FOR COMPARISON:

JANUARY - MAY 1982	28,448,347	8,492,044
JANUARY - MAY 1983	63,560,371	18,973,245

CONVERSION: 3.35 GAL/BU.

SOURCE: FAS-USDA, SINGLE STRENGTH EQUIVALENT GALLONS AND 42# BU RAW FRUIT EQUIVALENT

APPLE JUICE IMPORTS - S/S EQUIVALENT

COUNTRY	1976 GAL.	1976 42 LB. BU.	1977 GAL.	1977 42 LB. BU.	1978 GAL.	1978 42 LB. BU.	1979 GAL.	1979 42 LB. BU.	1980 GAL.	1980 42 LB. BU.	1981 GAL.	1981 42 LB. BU.	1982 GAL.	1982 42 LB. BU.
CANADA	151,718	42,253	1,225,533	341,311	945,974	263,454	449,434	124,843	441,977	122,771	1,418,218	393,949	1,323,249	395,000
AUSTRIA	126,373	35,195	370,029	103,053	276,938	77,127	1,063,959	295,544	1,594,972	443,047	870,080	241,689	3,776,689	1,127,370
BULGARIA	146,006	40,663	404,016	112,518	216,916	60,411								
FRANCE	619,275	172,466	1,885,776	525,189	1,111,901	309,464	5,678,321	1,577,311	4,160,047	1,155,568	1,491,691	461,014	1,948,382	581,607
GERMANY, WEST	28,126	7,833	73,849	20,567	14,453	4,025	920,711	255,753	2,775,862	771,072	6,700,798	1,861,303	14,268,396	4,259,223
ITALY	369,213	102,826	430,198	119,810	184,100	51,272	446,902	124,139	784,359	217,877	18,205	5,057	140,185	31,100
SPAIN	179,192	49,905	844,300	235,138	375,404	104,550	1,854,545	515,131	1,587,090	440,853	3,297,474	915,965	7,930,848	2,369,805
SWEDEN	2,420	674			7,049	1,963					71	20		
ARGENTINA	18,858,167	5,252,000	16,987,603	4,731,047	30,160,744	8,399,767	40,716,515	11,310,143	18,338,613	5,094,059	40,570,199	11,269,500	41,946,650	12,251,300
CHILE	57,751	16,084	30,510	8,497	778,261	216,746	733,630	203,786	459,228	127,563	2,152,007	597,780	1,623,372	484,589
MEXICO	158,757	44,214	344,235	95,869	394,566	109,887	822,758	228,543	1,351,808	375,502	2,422,317	672,866	3,024,918	902,961
AUSTRALIA	103,030	28,694	972,540	270,852	3,710	1,033			12,614	3,503	52,416	14,560	175,520	52,394
CHINA-MAINLAND	53	15	1,424	397	152	42	2,978	827	484	134				
ISRAEL	281,848	78,495	241,311	67,205	1,092,326	304,213	1,026,358	285,099	603,669	167,686	1,074,487	320,746	2,215,875	661,440
JAPAN	27,255	7,591	314	87					306	85			234	70
NEW ZEALAND	1,418,532	395,061	801,531	223,226	697,312	194,201	361,942	100,539	501,902	139,417	2,612,241	725,623	2,933,904	875,792
SOUTH AFRICA	11,859,828	3,302,962	4,604,931	1,282,479	4,717,044	1,313,697	7,748,099	2,152,249	7,607,375	2,113,160	12,019,592	3,338,776	10,905,426	3,255,411
URUGUAY											654,066	181,685		
OTHER			2,630,739	732,983	3,417,302	949,251	4,742,500	1,317,361	3,330,059	925,016	5,440,646	1,513,512		3,342,224
TOTAL	34,387,544	9,576,933	31,856,859	8,870,228	44,394,132	12,361,303	66,568,652	18,491,288	43,550,365	12,097,313	81,602,668	22,667,408	103,758,034	30,880,374
TOTAL U.S. UTILIZATION FOR JUICE		26,407,000		30,171,000		35,229,000		45,452,000		49,926,000		45,691,000		34,731,000 EST.
DOMESTIC & IMPORTED JUICE		35,983,933		39,041,228		47,590,303		63,943,288		62,023,313		68,358,408		65,611,374
% OF TOTAL UTILIZED COMING FROM IMPORTS		26%		22%		26%		29%		20%		33%		47.1%

SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

TOTAL VALUE OF APPLE JUICE CONCENTRATE
U.S. DOLLARS

	1977	1978	1979	1980	1981	1982
CANADA	723,325	607,180	587,983	672,514	1,395,956	1,746,284
AUSTRIA	228,061	230,090	1,230,024	1,303,626	598,448	3,522,043
BULGARIA	248,189	140,533				
FRANCE	1,381,238	1,270,090	7,427,614	4,333,058	1,449,649	2,319,052
GERMANY, WEST	56,404	58,948	887,950	2,632,434	5,148,107	12,517,460
ITALY	339,665	236,047	445,157	553,208	50,487	142,119
SPAIN	643,579	500,439	1,876,755	1,410,151	2,911,983	7,417,324
SWEDEN		14,064			299	
ARGENTINA	14,281,117	24,473,080	39,617,474	17,319,472	27,225,955	36,250,807
CHILE	16,033	726,621	646,075	330,354	1,508,033	2,082,783
MEXICO	315,434	392,758	930,528	990,832	2,831,238	2,839,929
AUSTRALIA	784,284	23,605		10,813	39,387	138,634
CHINA, MAIN	2,271	784	3,825	1,910		
ISRAEL	135,896	866,229	822,262	741,819	1,460,772	2,145,825
JAPAN	821			1,900		
NEW ZEALAND	437,606	691,473	385,429	370,944	2,045,947	2,802,472
SOUTH AFRICA	3,561,717	4,306,305	7,489,938	6,380,812	9,112,657	9,148,190
URUGUAY					325,261	
OTHERS	1,726,038	2,451,633	4,588,245	3,011,753	4,122,958	9,261,205
TOTAL	24,890,678	36,989,879	66,939,259	40,065,600	60,227,958	92,334,127

SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

The following is based on information received from the Foreign Agricultural Service, USDA:

1) About 12 concentrating plants are operating in Argentina this year, however, some are very small.

2) About 65% of the apples for processing go to concentrated apple juice (CAJ).

3) The country of destination for concentrated apple juice (CAJ) remains unchanged i.e. mostly the U.S.

4) a. the current export rebate for CAJ is 10%, plus 10% for shipments going throug Patagonia port of Puerto Madryn. Reportedly, almost half of 1981 season shipments too advantage of shipping through Puerto Madryn.

b. CAJ is also eligible for an "additional" export rebate of 15% for the six mont period ending next April 21.

c. Since late August, CAJ exporters have also been eligible for pre-export financ covering up to 60% of the export value, with interest at one percent per annum and a repayment term of 120 days.

d. The 10/90% financial/commercial exchange rate mix is still in effect for CAJ exports. Currently, the financial rate has increased to almost 60% above the commerci rate level. (financial rate is 11,000 pesos per US$, commerical rate is 6,942 pesos per US$), thus increasing the export value edge over non-value added products such as apples by six percent.

e. Given the current situation, all plants which operated this year are expected in operation for 1982. Sources expected a normal to good year.

f. Sudden pesos devaluations this year occured as follows: Feb 2-10%, April 1-30 June 1-30%, July 22-30%; (the two-tier exchange rate system was applied only to the financial rate with a few exceptions, export transactions utilize the commercial rate) (If loans are available for CAJ shippers because of the devalued peso $160 U.S. per me

Statement of David J. Steinberg, President, U.S. Council for an Open World Economy

(The U.S. Council for an Open World Economy is a private, non-profit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any private interest.)

This statement outlines the Council's views on the bills identified below. Absence of a stated position on other bills covered by this hearing (bills we have not had an opportunity to study and evaluate) should not be interpreted either as support or opposition.

The Council supports those bills before the Subcommittee that would reduce or suspend tariffs, although we would prefer permanent reductions or suspensions, leaving resumption of higher duties conditional on proof that such subsidies (which is what tariffs are) are essential as components of coherent adjustment strategies addressing the real problems and needs of these industries. U.S. producers who object to these duty reductions or suspensions should seek remedies for their marketing difficulties through measures that exclude import restriction except as steps of last resort and only if essential as temporary devices to buy time for coherent adjustment strategies addressing the real problems and needs of these sectors of our economy. In accordance with these principles, we oppose H.R. 2711, a bill to impose a duty of 1/10 of one cent per gallon of apple juice and pear juice.

Although we applaud the objective of removing import quotas on sugar, we believe that H.R. 3727 (a bill to repeal any import quotas currently in effect on sugar and prohibit the President from imposing such quotas) is too radical a proposal—in the sense of not even permitting import quotas for purposes of a redevelopment strategy to restructure and revitalize the U.S. sugar-growing industry and provide adjustment help (if needed to communities that may be adversely affected by shifts out of sugar production. Quotas or other forms of import restriction should be available as a last-resort but temporary component of a balanced adjustment strategy aimed at development of a viable sugar-growing industry, if such an objective is feasible without permanent import controls or other government subsidies.

H.R. 2776

Relating to the tariff treatment of gut imported for use in the manufacture of surgical sutures.

See comments of American Farm Bureau Federation at p. 101.

H.R. 2851

Relating to the duty on certain knives (commonly known as snap blade tools) having movable blades.

No comments were received on this bill.

H.R. 2947

To provide for the temporary suspension of duty on the importation of fluorspar.

STATEMENT OF THE AMERICAN IRON & STEEL INSTITUTE

The American Iron and Steel Institute (AISI) is pleased to submit this testimony in support of H.R. 2947, a bill which would suspend the duty on fluorspar until June 30, 1986.

AISI is the principal trade association of the steel industry. Its 60 domestic member companies account for approximately 90% of the steel production capability in the United States. AISI membership also includes some Canadian and Latin American steel companies.

Fluorspar is the commercial name for the mineral fluorite, which contains calcium fluoride (Ca_2F_2). The tariff schedules of the United States recognize two grades of fluorspar; the first, commonly called acid grade fluorspar, contains over 97.0% CaF_2 and requires a duty of $2.10 per long ton. The second grade, commonly called metallurgical grad 2 fluorspar, contains 97.0% CaF_2 or less and requires a duty of 13.5% ad valorem. Metallurgical grade fluorspar is used almost exclusively by the steel industry and is the material on concern to AISI in this bill.

On January 1, 1980, the duty on metallurgical grade fluorspar was converted from a specific rate of $7.50 per short ton to an ad valorem rate of 13.5%. This conversion has resulted in a substantial net increase in duties that have been paid by United States consuming steel producers.

The 13.5% ad valorem duty on metallurgical fluorspar is one of the highest duties applied to any basic raw material or mineral.

AISI believes that this duty should be suspended because it has failed to maintain domestic production levels. In 1982 total domestic production of fluorspar totaled 77,017 short tons, less than 25% of which was metallurgical grade. That same year, imports of metallurgical grade fluorspar totaled 135,635 short tons. According to the Bureau of Mines, there have been no shipment of domestic metallurgical fluorspar for the last three calendar quarters.

The estimated duty payment on metallurgical grade fluorspar in 1982 was $1.3 million or $10.08 per short ton. Considering the lower value of metallurgical fluorspar, compared to acid grade, it appears that the duty alone paid by domestic consumers on metallurgical grade fluorspar is about equal to, and may exceed, the value of the 1982 domestic production of metallurgical fluorspar.

Domestic supplies of metallurgical fluorspar are not available and reliance on foreign fluorspar is necessary. The principal foreign source of fluorspar is Mexico. China has become a major supplier during the last two years. South Africa represented less than 5% of U.S. imports of metallurgical fluorspar during 1981, and less than 2% in 1982.

In a recent report, the U.S. Bureau of Mines summarized the fluorspar situation with the following statement:

"Fluorspar is considered a strategic and critical commodity because U.S. import reliance is greater than 85% and fluorspar is necessary in most steel and aluminum production processes.

"Fluorine compounds [derived from fluorspar] are also used in the production of nuclear fuel. The chemical and ceramic industries are also significant users of fluorspar. There are many other diverse uses of fluorspar including water fluoridation.

"With the exception of 1981, domestic production of fluorspar has declined since 1976. The decline is believed to have been caused by recessions of the U.S. economy, the low profitability of sales of domestic fluorspar at prices that are competitive with foreign production, and health and safety regulations.

"The recent recession has lowered the demand for fluorspar and, together with high interest rates, has created problems for current producers and discouraged potential producers.

"Reserves of fluorspar in the United States are not sufficient to meet U.S. demand until the year 2000, and the recovery of fluosilicic acid, which is dependent on the production of phosphate fertilizer, may be needed to fill the gap. The United States contains extensive subeconomic fluorspar resources, the characteristics of which—ore grade, deposit size, and location with respect to market and transportation routes—makes them unprofitable under current economic conditions. Significant price increases would be needed for these resources, located mostly in the West, to become economical.

"Foreign reserves of fluorspar are more than adequate, and foreign producers, because of lower operating costs, are able to export to the United States at prices below those that are profitable for most domestic producers."[1]

AISI believes that it is clear that the 13.5% duty on metallurgical grade fluorspar is not serving as an effective protection for the domestic industry and should be suspended.

In summary, AISI supports H.R. 2947 and urges its adoption.

OGLEBAY NORTON CO.,
Cleveland, OH, November 17, 1983.

SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS,
House of Representatives,
Washington, DC.

GENTLEMEN: The duty on Fluorspar has been unsuccessful in maintaining a viable fluorspar industry in the United States. As a long-term processor and distributor of fluorspar, we support enactment of H.R. 2947 to suspend this duty until June 30, 1986.

Very truly yours,

ROBERT A. THOMAS,
Assistant Vice President,
Administration and General Counsel.

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[1] "Fluorspar," Mineral Commodity Profiles, Bureau of Mines, U.S. Department of the Interior, 1983.

H.R. 3158

To implement the Customs Convention on Containers, 1972.
No comments were received on this bill.

H.R. 3159

To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

STATEMENT OF EUGENE J. MILOSH, EXECUTIVE VICE PRESIDENT, THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The American Association of Exporters and Importers ("AAEI") submits this statement in opposition to H.R. 3159. H.R. 3159 would amend section 505 of the Tariff Act of 1930, 19 U.S.C. § 1505 to require that Customs duties determined to be due upon liquidation or reliquidation are payable immediately. H.R. 3159 would also require payment of interest on those duties when not paid within 25 days of liquidation.

AAEI is a voluntary association of 1,300 exporters, importers and service firms, founded in 1921. AAEI's members are active in importing and exporting a vast array of goods, such as apparel, electronics, agricultural products, computers and steel. AAEI members also provide finance, insurance and transportation services to the international trade community.

I. INTRODUCTION

Under present law as interpreted by the Court of International Trade and the Court of Customs and Patent Appeals, now the Court of Appeals for the Federal Circuit, additional duties deemed due at liquidation or reliquidation are not payable until 90 days after the date of liquidation or reliquidation. If an administrative protest is filed, additional duties are not payable until 180 days after the date of denial of the protest. This situation follows from the decision of the Court of International Trade in *Heraeus-Amersil, Inc.* v. *United States,* 1 C.I.T. 249, 515 F. Supp. 770 (1981), aff'd, 671 F.2d 1356 (CCPA 1982), and has been carried over to the Customs Regulations, 19 C.F.R. § 24.3(e)(1983)

H.R. 3159 would amend section 505 to provide that increased duties assessed at liquidation or reliquidation are due immediately, and if payment is not received within 25 days of liquidation or reliquidation, interest is to be assessed from the date of liquidation. The bill would also amend section 520 of the Tariff Act of 1930 by adding a new subsection (d) to provide that if an entry is reliquidated pursuant to protest, section 520(c)(1) , or court order, interest, measured from the date of payment, will be allowed on amounts paid as additional duties and subsequently refunded. For reasons which are detailed below AAEI feels that the legislation is unnecessry, unfair, and if passed, would work an undue hardship on many importers.

II. BACKGROUND

In order to palce this proposed legislation in perspective it is necessary to review certain technical background.

At the time of entry the Customs Service has the authority under section 505(a) of the Tariff Act of 1930, authority which it frequently exercises, to insist that the importer pay estimated duties in an amount deemed appropriate by the Service. It is AAEI's belief that the great majority of entries are accompanied by duty deposits in amounts ultimately deemed proper by the Customs Service. These duty deposits are not the subject of this legislation. H.R. 3159 addresses only increased duties, that is additional duties found due subsequent to entry at the time of liquidation or reliquidation. Liquidation is the final administrative action relating to the amount of duties due against a particular entry. Although we do not have access to data permitting us to determine the number of entries against which additional duties are assessed at liquidation, we believe that the number is insignificant. It is also our belief, again not supported by specific information, all of which is in the possession of the Customs Service, that liquidation far more frequently results in the refund of estimated duties.

In transmitting a draft of H.R. 3159 to the House of Representatives, the Treasury Department cited four adverse consequences of the *Heraeus-Amersil* decision: 1) an increase in the number of administrative protests; 2) Customs difficulty in responding to protests; 3) increase in the number of Customs decisions brought to court, and 4) delay in collecting duties owed the Government.

The increase in protests is not necessarily a consequence of the *Heraeus-Amersil* decision. There may be other reasons; e.g. changes in the value law and other changes brought about by the Trade Agreements Act of 1979 may be the reason for the increase in protests activity. Unless the protests refer to entries liquidated with an increase, there can be no connection with *Heraeus-Amersil*. If there is a connection, the Customs Service should have no difficulty in identifying and quickly denying those protests whose only purpose is to delay payment. A program designed to achieve this capability is a far better solution to any problems which have been the consequence of the *Heraeus-Amersil* decision than H.R. 3159.

III. AAEI POSITION

A. *The basis for AAEI's opposition.*—The primary reason that AAEI opposes this legislation is that it is simply unfair. First, as noted above, the Customs Service has the authority to require importers to deposit estimated duties in whatever amounts the Service deems appropriate. Second, it seems to AAEI that the current state of the law is the proper approach, one which Congress in its wisdom has mandated since 1922. An importer should not be required to pay increased duties when it believes that the increase imposed by the Customs Service is improper. The law provides that an importer may protest such an increase and it is only equitable to delay the requirement for payment of increased duties until such time as that protest has been acted upon.

The Customs Service seeks this legislation in part because it believes that its ability to collect duties owed to the Government is being hampered. A protest addresses this very point—what is owed the Government. Until the protest is acted on the amount due or owed has not been determined. Importers should be permitted to exhaust their administrative remedies. H.R. 3159 substantially would deny the right to meaningful administrative review.

The payment of interest will not alleviate the financial burden on importers faced with substantial duty increases. In many instances the increases are so large that the requirement of payment will jeopardize the financial integrity of the importer. This is a particularly unfair result when the importer believes that Customs has assessed duties in an inappropriate or illegal amount and the importer has filed or intends to file a protest challenging the increased duties. The only equitable approach is to delay the requirement of payment at least until the protest has been considered by the Customs Service. It is patently unfair to require American business to pay increased duties when the underlying legal and factual issues upon which the increase was based are the subject of an administrative challenge.

B. *Calculation of interest under the bill.*—AAEI notes that the bill does not provide details concerning the interest to be assessed on late payments. The proposed legislation states only that interest shall run from the date of liquidation or reliquidation and shall be "at a rate determined by the Secretary of the Treasury." Presumably, the details of interest will be covered by regulation.

Putting aside the question of whether this is a lawful delegation of authority, AAEI notes that Customs has proposed a regulation regarding interest on delinquent payments. 48 Fed. Reg. 10077 (1983). This proposal would require that interest would be charged beginning with the due date for full 30 day increments regardless of when payment is made within that 30 day period. Thus, under the proposed regulation, whether payment is two days late or 30 days late, a full 30 days interest is assessed. Commenting on these proposed regulations AAEI noted that in extreme circumstances the effective rate of interest charged the importer could be as high as 389%. We raise this here to suggest that in the event the Committee determines to approve H.R. 3159, the legislation itself, or the legislative history, contain an admonition to the Customs Service that if it is to charge interest it do so on a more equitable basis than would be the case under the regulations recently proposed.

IV. SUGGESTED AMENDMENTS

A. *Interest on refunds of estimated duties.*—Under H.R. 3159, payment of interest to a successful protesting party runs only from the date of liquidation or reliquidation, and then is paid only against the refund of increased duties. Interest would not be paid on refunds of excess estimated duties deposited at time of entry. Most protests are filed against liquidations where there are no increased duties but where Customs required the payment of estimated duties in amounts ultimately found improper by the Service itself. AAEI believes that the refund of estimated duties should be treated in the same fashion as refunds of increased duties. AAEI therefore suggests that if H.R. 3159 is to be reported out by this Committee, and AAEI strongly opposes any such action, that it be amended to provide that all refunds paid as a result of a protest, 520(c)(1) claim, or otherwise, bear interest from the date of payment. Language which would effect this change in proposed section 520(d) is set forth in the Appendix.

The language we suggest also would provide that in certain instances increased duties which are refunded at liquidation without the necessity of filing a protest or other claim would bear interest. We limit the interest requirement in these circumstances to entries where liquidation has been extended or suspended pending Customs Service action on a protest, court action or other administrative or judicial proceedings. This change is also reduced to the suggested language set forth in the Appendix.

B. *Refunds prior to liquidation.*—AAEI proposes an additional amendment to permit refunds prior to liquidation. As interpreted by the Customs Service, current law permits a refund of duties only at liquidation or reliquidation. Instances arise where Customs acknowledges that the duties deposited were erroneously high, perhaps because of clerical error. In these situations, although it readily acknowledges that it has collected excessive duties, Customs takes the position that it may not refund the duties until the entry is liquidated. This occasionally works a hardship where liquidation is delayed, for example, by reason of a countervailing duty or antidumping proceeding. Accordingly, AAEI proposes a change in section 520(a)(1) of the Tariff Act of 1930 which would permit Customs to refund duty overpayments in appropriate cases prior to liquidation where liquidation will be delayed for a substantial period of time. Language which would effect this change is set forth in the Appendix.

C. *Effective date.*—H.R. 3159 would provide that the amendment to section 505 shall take place on the thirtieth day after the date of enactment. Liquidations and reliquidation made prior to that time would be deemed to have been made as of the effective date. The amendments to section 520 would apply only to entries reliquidated after the date of enactment.

AAEI believes the proposed effective date of section 505 is unfair. This legislation should not penalize those importers who have followed the law as applied under the *Heraeus-Amersil* decision. The legislation should be effective only as to those liquidations and reliquidations which take place on or after the thirtieth day following enactment. It should have no effect on liquidations or reliquidations made before such time. Indeed, it is somewhat anomalous that in situations where the Customs Service would receive interest the legislation would be retroactive, whereas under circumstances where the legislation would require the Customs Service to pay interest to importers, the legislation is effective only as to liquidations and reliquidations made after the enactment of the proposed legislation. Presumably, this is so because the government may find it difficult to budget funds for interest payments where such were not planned. The same difficulty exists for importers. There is no reason why the Government should be treated more favorably than its citizens.

V. CONCLUSION

For the reasons set forth herein, AAEI believes that H.R. 3159 should not be reported out by the Committee. The legislation is unnecessary to resolve the difficulties faced by the Customs Service. Further, the legislation is fundamentally inequitable and would work a serious and unnecessary hardships on importers, many of which are small businesses.

AAEI appreciates the opportunity to express its views on this very important legislation. If we can provide additional information or comment please do not hesitate to contact the undersigned.

APPENDIX

SUGGESTED AMENDMENT OF SECTION 520

(a) The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

(1) Excess deposits.—Wherever it is ascertained [on liquidation or reliquidation of an entry] that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount [paid as increased or additional duties under section 505(c) of this Act] *refunded* at the annual rate established pursuant to [that] section *505(c) of this Act* was determined as of the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, United States Code, whichever occurs first. *This subsection shall apply equally to entries liquidated with a refund where liquidation was extended or suspended pursuant to section 504 of this Act by reason of a pending protest.* [Language to be deleted is in brackets; new language is italicized.]

STATEMENT OF JOSEPH F. DONAHUE, JR., CHAIRMAN, ADMINISTRATIVE PRACTICE COMMITTEE, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

INTRODUCTION

This statement is presented on behalf of the Customs and International Trade Bar Association (CITBA), a national bar association whose members practice throughout the United States primarily in the area of customs and international trade law. Our members represent clients before the United States Customs Service, both in Washington and at ports throughout the United States, the Department of Commerce, the International Trade Commission, the United States Court of International Trade, and the United States Court of Appeals for the Federal Circuit. One of our common interests is the fair and effective administration of the laws related to importing and exporting. The Association was organized in 1919 as the "Association of the Customs Bar." In 1981, its name was changed to the Customs and International Trade Bar Association, following the change in name of the United States Customs Court to the United States Court of International Trade and consistent with the evolution of the practice of its members from the relatively narrow scope of U.S. customs matters to the broader range of issues related to international trade. We welcome the opportunity to express our views on H.R. 3159.

SUMMARY OF H.R. 3159

H.R. 3159, entitled "A Bill to require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes," may be broken into two sections. Section 1 relates to the time when duties are to be due and payable, and Section 2 relates to the payment of interest by the Government on monies which are paid as increased duties and subsequently refunded. Specifically, under Section 1(a), Section 505 of the Tariff Act of 1930 (19 U.S.C. § 1505) would be amended by adding a new subsection (c) which would provide that duties determined to be due upon liquidation or reliquidation shall be due on the date of that liquidation or reliquidation, and if payment is not received by Customs within 25 days after that date, payment shall be considered delinquent and the importer will be assessed interest from the date of liquidation or reliquidation. Under Section 1(b), the amendment is to take effect on the 30th day after the date of enactment, but, for purposes of applying the amendment with respect to liquidations and reliquidations made before such 30th day, and with respect to which the duties due thereon have not been paid, the liquidation and reliquidations shall be deemed to have been made on such 30th day. Thus, if an entry has been liquidated or reliquidated prior to the effective date of the law, and duties have not been paid, the duties would be due on the effective date of the law, and if not paid within 25 days thereof would be subject to the assessment of interest.

Under Section 2(a), Section 520 of the Tariff Act of 1930 (19 U.S.C. § 1502) would be amended by adding a new subsection (d) which would provide that if an entry is reliquidated pursuant to a protest, or an application for relief under section 520(c)(1) or by court order, interest shall be paid on any amount which has been paid as increased or additional duties under section 505(c). The interest rate shall be calculated from the date of payment of the increase, and the rate will be the same as the rate of interest determined applicable to late payments under section 505(c) and in effect at the time of liquidation or reliquidation of the entry in question.

The proposed amendment was prompted by the decision of the United States Court of Customs and Patent Appeals (now the United States Court of Appeals for the Federal Circuit) upholding a decision of the Court of International Trade in the case of *United States* v. *Heraeus-Amersil, Inc.* Under that decision, increased duties which were determined on liquidation were held not to be due and payable until either (1) the 90-day protest period provided for in 19 U.S.C. § 1514(c)(2) has expired without the filing of a protest, or (2) if a protest has been filed and denied, when the time to appeal to the Court of International Trade under 28 U.S.C. § 1581(a) has expired.

SUMMARY OF POSITION

The CITBA position is summarized as follows:

1. We oppose Section 1(a) which would make increased duties due upon liquidation or reliquidation. We propose, as an alternative, that duties should not be due until after customs has rendered a final decision on a protest, or the protest period has expired.
2. We recommend that it be made clear that any amount assessed as interest as a result of late payment of increased duties is to be included in any amount returned to the importer if duties are eventually refunded.
3. We oppose the retroactive effect provided for in Section 1(b) and propose that the law should apply with respect to entries made on or after the effective date.
4. We support Section 2(a) which provides for the payment of interest on any repayment of increased duties. We propose, also, that interest should be paid on refunds of duty deposits.
5. The concerns raised by the Customs Service as a result of the *Heraeus* decision will be eliminated under the CITBA proposal.

The changes proposed in paragraphs 1, 3 and 4, above, appear in brackets in a copy of H.R. 3159 which is attached hereto as Appendix 1. The language to be removed has been lined out. The proposal covered by paragraph 2, above, has been added as Section 3 to H.R. 3159.

BASIS OF POSITION

1. *The importer has a statutory right to administrative review and should be given an opportunity to exhaust the administrative process before being required to pay increased duties.*

At the time that merchandise is entered into the United States, the District Director has the discretion to determine the appropriate amount of duties to be deposited. (See, 19 U.S.C. § 1505(a); 19 C.F.R. 141.103.) If the importer disagrees with the deposit required by Customs, he must nevertheless deposit the estimated duties or his goods will not be released. While the primary issue which is the subject of the proposed legislation does not relate directly to the duties deposited at entry, but rather to duty increases found to be due when the entry is liquidated or reliquidated, it is important to note that it is Customs, and not the importer, that controls the initial deposit of estimated duties.

Having deposited duties which were considered sufficient at the time of entry, the importer is ultimately sent a "liquidation notice" which reflects the final computation and ascertainment of duties by the Customs Service with respect to the particular entry. The decision of the customs officer is final and conclusive unless a protest is filed or unless a civil action contesting the denial of a protest is commenced in the United States Court of International Trade (19 U.S.C. § 1514(a)). If a protest is not filed, the decision becomes final 90 days after liquidation.[1] However, if a valid protest is filed, the "finality" of liquidation is suspended and the importer is given the opportunity to present matters of fact and law to support a reversal of the original customs decision. During the same 90-day period, Customs can *sua sponte* reverse itself and reliquidate the entry at a higher rate or value and demand additional duties or reach a lower rate or value and refund any excessive duties. This procedure obviously recognizes the value of administrative review, intended for the benefit of both Customs and the importer. It also recognizes the possibility that a decision originally made by the customs officer will be reversed. It is inconsistent with this procedure to require payment of increased duties during the period within which the customs decision may be challenged and the original decision reversed.

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[1] In the case of a clerical error, mistake of fact or other inadvertance not amounting to an error in the construction of law, a challenge may be raised up to one year after liquidation (19 U.S.C. § 1520(c)(1)).

Stated otherwise, the suspension of finality should also suspend the obligation to pay until action is taken upon the protest, or the period to protest expires.

(a) Review of the protest.—The customs officer enjoys a presumption of correctness with respect to the decision which he has made and the burden is on the protesting party (generally the importer of record) to establish that Customs' decision is incorrect and that the claimed position is correct. (See, e.g., *United States* v. *Perez,* 464 F. 2d 1043, 59 CCPA 190 (1972).)

A brief summary of the procedure involving the filing and reviewing of a protest is appropriate. The protest itself is a rather simple document, wherein the importer briefly describes the decision being protested, the claim of the protesting party, and the factual and legal arguments in support of the protest. As long as the protest contains these elements, no rigid form need be followed.[2] Generally, the protest is delivered to the Protest Section in the customhouse and then to the import specialist for his review and decision. In effect, the import specialist who made the original decision which resulted in the increased duties now has the opportunity to review that decision in light of additional facts and/or law provided by the importer. Since each import specialist handles only certain lines of merchandise, and since the protest is directed to the import specialist who made the decision which is being challenged, it is fair to say that the import specialist generally is familiar with the merchandise, the legal issues involved, and the facts in the particular case. The burden is not on the import specialist to justify his original decision. Rather, as noted earlier, his decision is presumptively correct and must be overcome by the importer's evidence.

The protest may address any number of factors. Frequently, the original decision of the import specialist may have been based on an incomplete set of facts. For example, the import specialist may not have had adequate information on the component material of an article, or its specifications, or its intended use, or the purpose of a certain feature of the merchandise, all of which can affect its tariff classification. Or, information as to the pricing of the article may have been needed, thus affecting its dutiable value. In other cases, a ruling of which the import specialist was unaware may be brought to his attention. Such cases are relatively simple to resolve and, when the facts are fully explained, the protest may be granted. Sometimes a case will involve a close question which requires a detailed explanation of the facts and law, with discussion of appropriate administrative and judicial authorities. Such protests are generally supported by a detailed memorandum filed by the importer or his counsel.

In reviewing the case, the import specialist will review any data submitted in support of the importer's claim. If the importer submits nothing more than a legal conclusion without supporting facts and/or law, he cannot expect the import specialist to look beyond the four corners of the protest and to receive more than perfunctory review and denial.[3] Such action would be consistent with the proposition that the burden rests on the importer to justify the correctness of his position.

(b) Possible delays in the protest procedure.—Once the protest and any supporting memoranda are filed, the matter is out of the hands of the importer and within the sole jurisdiction of the Customs Service. If delays occur with respect to the review of the protest, the importer should not be responsible since he cannot control the delay. It is not uncommon to encounter rather significant delays in the review of protests within the Customs Service, and we submit that these delays could be reduced if a conscious effort were made to do so. When the protest is filed, it is held by the protest section until the expiration of the full 90-day period. Thus, if a protest is filed 30 days after liquidation, it will remain in the protest section at least another 60 days before being directed to the import specialist. It is our understanding that the reason for so holding the protest is so that if the protest is amended during this period, the amendment can be combined with the intitial protest. (It is also our understanding that very few protests are amended after filing.) At the expiration of the 90 days, the protest and the related entry documents are forwarded to the import specialist. This is a clerical task. When the import specialist receives the document, he must review the points of fact and law raised by the importer and render his decision. The decision is not in the form of a letter to the importer, but

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[2] A representative standard form (Customs Form 19) available from the Customs Service is attached to this statement as Appendix 2.

[3] When an issue is raised which covers several entries of the same merchandise, liquidated on various dates, one protest generally will be supported by the detailed factual and legal discussion with the subsequent protest merely referring to or incorporating by reference the detailed presentation. The import specialist reserves judgment on these protests until he has reviewed the detailed arguments, and then grants or denies all protests accordingly.

rather a copy of the protest is returned with the "Customs Decision on Protest" indicated by a check mark in one of the four boxes in section 14A of the protest. (See Appendix 2) Thus, if the import specialist does not receive the information required, he merely has to check the box indicating the protest has been denied. It is difficult to see why there should be any significant time expended in this decision process. The import specialist is, assumably, acquainted with the law and facts related to the issue in question. He must be given specific facts and law by the importer in support of his claim. If he does not receive those facts and law, he will deny the claim. Once a claim has been granted or denied with respect to one protest, all other protests covering the same issue can be summarily granted or denied by a clerical member of the import specialist's team. If there are delays in this process, the importer should not be made to suffer by the requirement to pay the increased duties pending Customs' decision on the protest.

At first glance, one might suggest that an importer is not disadvantaged if he is required to pay prior to a decision on the protest in view of the fact that he is able to receive interest on the money from the date of payment. This suggestion is troublesome for two reasons. First, it seems to be inconsistent with the general "exhaustion of remedies" principle under which a party must pursue his administrative relief prior to commencing court action. Certain administrative machinery has been put in place to that an importer can suspend the finality of the administrative decision and legitimately challenge the customs action, and if the decision is thereby rendered "not final," there should be no obligation to pay until a final administrative decision is rendered. Even more critical, however, is the possible injury to an importing company who is precipitously faced with unexpectedly high duty bills, particularly when it had no reason to anticipate the increased duties. Generally, a company anticipates its duty liability at the time of entry on its knowledge of the product and the estimated duties required with the entry and prices the merchandise accordingly. The later assessment of a substantial duty increase on a small company that did not expect the increase can cause financial hardship and may threaten the company's very existence. While we recognize that an importer must ultimately pay the duty liabilities which it owes, we suggest that in view of the administrative machinery available by the protest procedure, the importer should be given the opportunity to present his case and, as frequently happens, satisfy Customs that the original entry was correct and that duties are not owing.

Our proposal would give the importer the full opportunity for administrative review. If, at the end of that review, the protest is denied, the importer would have to pay within 30 days of denial. This proposal would, on the one hand, remove the need to pay before the administrative remedies were exhausted, but would prevent the importer from witholding payment during the period from 30 days after denial until the action is filed in court (which can presently be done under the *Heraeus* decision). In effect, the 180-day "free" period which the importer under the *Heraeus* decision, running from the date of denial of the protest to the date of filing of the summons, would be shrunk to a mere 30 days. We suggest that this proposal is fair to the importer and fair to the Customs Service. Any extensive delay between the time that the protest is filed and the time that it is decided and, for the sake of discussion, denied, would be delay resulting from Customs' action and outside of the control of the importer. It is unreasonable to penalize the importer for this delay. The solution to such delays should not be sought by requiring the importer to pay the increased duties sooner; the solution should be sought through procedures within the Customs Service, and specifically in expediting the handling of protests, which would remove the cause of this delay.

2. If interest is assessed against the importer because the payment of increased duties is late, the interest as well as the increase should be refunded if the importer prevails on the protest or by judicial decision.

We would assume that if Customs or the Court eventually concludes that the importer is entitled to a refund of the increased duties, a refund of interest assessed for late payment of the increase also would be refunded. However, this is not clear from the proposed bill and should be addressed. An amendment of 19 U.S.C. § 1515(a), which is directed to refunds, would make it clear that any amount paid as interest for the late payment of duties would also be refunded with the duties which are refunded.

3. The law should not be applied retroactively.

Under section 1(b), the proposed amendment would become effective 30 days after the date of enactment. Entries which had been liquidated before the effective date, but as to which duties are unpaid on that date, will be deemed to have been liquidated on the effective date. This provision is difficult to justify. In effect, importers who have received duty increases for entries liquidated since April 1981, and who have been legitimately seeking administrative relief and have deferred payment in acccordance with the law enunciated by the Customs Court, will now have to pay over two and a half years of duty bills on a single day. Some companies, of course, will have the cash to make these payments, but as to many others, the obligation to produce such substantial sums of cash will be burdensome, if not impossible. One might suggest that such importers would eventually have to produce the same amount of cash under the present law or even under the CITBA proposal. The difference, however, is that neither the present law nor the CITBA proposal will require payment for all the entries on one date. Under the present law, duties must be paid by the time a summons is filed to commence an action in the Court of International Trade. The summonses are tied to protests which have been denied on various dates. Thus, summonses are staggered and payment of increases are staggered. The same effect is produced by the CITBA proposal; entries are covered by different protests which would be denied on different dates. Payments of increased duties would thus be staggered. Under the proposed bill, the burden of requiring payment of bills on a single date when they have accumulated over a period of two and a half years or more would create chaos for a large portion of the importing community. No legitimate reason supports such a proposal and; therefore, any bill which may be passed on this subject should not be applied retroactively. It should apply only to entries made, or withdrawn from warehouse, for consumption on or after its effective date. Such language is routine in legislation directed to imports.

4. Payment of interest on duty increases which are subsequently refunded is fair.

Whether increased duties are paid 25 days after liquidation, as under the proposed bill, or following denial of a protest, as under the CITBA proposal, the Customs Service will have the benefit of the payment and the importer will be deprived of the money until the customs decision is overturned. A decision overturning the assessment would indicate, in effect, that the Customs Service never was entitled to the money. It is appropriate in such circumstances to return the increase with interest.

As indicated earlier, the District Director at each port has the discretion to determine the duties to be deposited at entry. If the deposit is eventually found to be excessive upon the filing of a protest, a refund is forthcoming. It would be appropriate to include interest on such refund since the importer was deprived the use of the money during the period that it was held by Customs.

5. The concerns raised by the Customs Service will be eliminated under the CITBA proposal.

In discussing this subject with the Customs Service, we have learned that Customs has several concerns as a result of the *Heraeus* decision which it seeks to correct by the proposed legislation. We suggest that the CITBA proposal, coupled with a realistic and reasonable effort by the Customs Service in handling protests, should eliminate Customs' apprehensions without imposing undue burdens on importers.

(a) Substantial increase in the number of protests filed.—It has been suggested that *Heraeus* will be a vehicle for importers to improve their cash flow by enabling them to withhold the payment of duties during the initial 90-day protest period, plus the period during which the protest is pending, plus the 190-day period following denial and prior to the time within which a court action must be filed. Customs has indicated that, in effect, it is good business practice for an importer to protest every entry and that this has led to the filing of frivolous protests.[4] For purposes of this discussion, we should consider three separate time periods:

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[4] Preliminarily, we must question the fundamental premise that a significant number of "frivolous" protests have been filed since the decision in *Heraeus Amersil.* The case was decided by the United States Customs Court in April 1981. Therefore, it would be expected, according to Customs' premise, that there have been a significant number of meritless protests filed since that date. According to figures supplied by the United States Customs Service in a letter dated October 25, 1983 to the Chairman of CITBA's Administrative Practice Committee (ADM-3-CO:T:D:EHG), protests for fiscal year 1980 amounted to 35,830, while protests filed in 1982 amounted to 40,102. During the same two periods, the number of entries liquidated increased from 4,635,974 for FY 1980 to 4,894,427 for FY 1982. In effect, .07% of the entries which were liquidated in FY 1980 were protested, and .08% of the entries liquidated in 1982 were protested. This relatively small increase is hardly dramatic. In addition, Customs indicated in the same letter that they do not maintain statistics to show the number of protests granted and denied. Thus, we cannot tell whether the increased protests were ever denied, much less whether they were frivolous. We must question, therefore, the basis for the suggestion that there has been and will be a dramatic increase in the number of frivolous protests.

(1) the first 90 days; (2) the indefinite period during which the protest remains within Customs' jurisdiction; and (3) the 180-day period following denial.

With respect to the first 90-day period, the statute recognizes that this is a reasonable period within which the importer should be able to develop and present information which would be a basis for Customs to review and reverse its decision. The initial decision is not final during this period. We question the procedure presently followed by the Customs Service to retain all protests in the Protest Section of the customhouse during the initial 90-day period on the likelihood that an importer may seek to amend the protest. In our experience, amendments rarely occur. Thus, if an importer protests an entry prior to the expiration of the 90-day period, i.e., on the 60th day, the protest should be routed to the import specialist at least for preliminary consideration. There is no need for Customs to delay review until the expiration of the initial 90-day period.[5]

With respect to the second period, i.e., after the importer has filed his protest and before the customs officer has ruled thereon, Customs has control over the extent of any delay. If the Customs Service seeks to reduce the attractiveness to an importer of filing protests merely in order to receive cash flow benefits during this period, it should act more promptly on the protests which have been filed. It is likely that the importer gets more "benefit" out of the delay during this stage of the proceeding than out of the initial 90-day period. As explained earlier, the importer has the burden to establish his claim and the import specialist has the expertise to evaluate the evidence and to distinguish the legitimate from the frivolous protest. If the protests are promptly referred to and reviewed by the import specialist, and those which are clearly meritless are denied, importers seeking to file frivolous protests will quickly learn that there is no particular benefit obtained by filing such protests. In effect, Customs can effectively remove any incentive to file frivolous protests by making it clear that these protests will be promptly reviewed, detected and denied. The importer who has a serious protest, supported by appropriate legal and factual documentation, will not be prejudiced.

The third "free" period, i.e. the 180 days between the denial of the protest and the obligation to file in court, will be reduced to a mere 30 days. Thus, rather than having 180 days from denial of protest to pay under our proposal, any party who has protested and received an adverse decision will have to pay within 30 days or incur interest.

(b) Hampering the ability of Customs to respond to protests.—As noted above, if the initial "waiting period" within the Customs Service is minimized, the Customs Service diligently addresses protests as received, and the 180-day period is reduced to 30 days, there is every likelihood that there will be no attraction to filing protests merely to have the use of the duty increase money during this period. Thus, it is fair to assume that there will not be any significant growth in the number of protests filed. Customs will be able to review the protests, and dismiss those which are without merit without being hampered in its ability to fully consider a supportable protest. There should be no likelihood that legitimate protests will not be properly reviewed within the two-year period provided for in 19 U.S.C. § 1515(a).

(c) Increased numbers of actions in the Court of International Trade.—Since the legitimate protests will be able to be fully reviewed and will not be summarily dismissed at the administrative level, protests which have been properly supported at the administrative level will be granted, and there will be no need to commence an action in the Court of International Trade. Thus, there will not be an increase in cases before the Court.

(d) Impact upon the collection of customs duties.—Since our proposal removes any incentive to file the "frivolous" protests, the volume of protests is not likely to be significantly greater than in the past. Concededly, the increased duties on entries not protested which would be collectable 25 days after liquidation under the proposed law will not be collectable for 90 days under our proposal, i.e. at the end of the 90-day period within which to file a protest. With respect to entries which are protested, the extent to which the delays occur beyond the 90-day period are under the control of the Customs Service and not the importer. While our proposal will

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[5] Another reason for awaiting the expiration of the 90-day period may be the concern that a broker or surety may file a protest against the same entry. This possibility should not prevent the Service from at least sending the importer's protest to the import specialist for his initial review. If the surety or broker does file a protest, the import specialist can consolidate it with the importer's protest. If there is not a second protest filed by the end of the 90-day period, the import specialist can finalize his decision on the protest which he has reviewed. We would expect that multiple parties file a protest against an entry in only a relatively few number of cases.

result in a greater extension of the collection period than would exist under the proposed law, it will be substantially less than the period for collection under the *Heraeus* decision. We suggest that this will not have any significant impact on the ability of Customs to collect revenues or on the amount of revenues collected.

In effect, the concerns registered by Customs are based in large part on the apprehension that under the *Heraeus* decision the number of protests will continue to grow and Customs will be substantially delayed in responding to them. As indicated, under the CITBA proposal, the number of protests will not grow and Customs will have ample time to review the ligitimate protests. To suggest that Customs will become mired in protests, and that the solution is to require the importer to pay increased duties long before he has exhausted his administrative remedies, is to fail to place responsibility where it properly should be placed.

We appreciate having the opportunity to provide our views on this important legislation. If there are any questions concerning our position, we will make ourselves available to confer with subcommittee staff members and provide whatever additional information may be helful.

APPENDIX 1

98th CONGRESS
1st Session

H. R. 3159

To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 26, 1983

Mr. Gibbons (by request) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To require that customs duties determined to be due upon a liquidation or reliquidation are due ~~upon that date,~~ [after a protest has been filed and denied, or after the time to file a protest has expired,] and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 505 of the Tariff Act of 1930 (19 U.S.C. 1505) is amended by adding at the end thereof the following new subsection:

"(c) Duties determined to be due upon liquidation or reliquidation shall be due on the date ~~of that liquidation or reliquidation,~~ [that a protest filed against the entry covered by the liquidation or reliquidation has been denied or, in the case where no protest has been filed, the period to file a protest under Section 514(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(2)) has expired,] and unless payment of the duties is received by the appropriate customs officer within [thirty] ~~twenty-five~~ days after [the later of said dates, as the case may be, payment] ~~that date~~, shall be considered delinquent and bear interest from the date of [denial of the protest or termination of the period set forth in said section 514(c)(2) of the Tariff Act of 1930, whichever occurs later,] ~~liquidation or reliquidation~~ at a rate determined by the Secretary of the Treasury.".

(b) The amendment made by subsection (a) shall take effect on the thirtieth day after the date of the enactment of this Act and [shall apply with respect to merchandise entered or withdrawn from warehouse for consumption] ~~for purposes of applying the amendment with respect to liquidations and reliquidations made before such thirtieth day, but with respect to which the duties due thereon are not paid on or before such day, such liquidations and reliquidations shall be deemed to have been made~~ on [or after] such thirtieth day.

SEC. 2. (a) Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) is amended by adding at the end thereof the following new subsection:

"(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as [estimated duties under section 505(a) of this Act or as] increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the date [of entry in the case of estimated duties and the date of liquidation or reliquidation in the case of increased duties.] ~~of liquidation or reliquidation.~~ The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section

2632 of title 28, United States Code, whichever occurs first.”.

(b) The amendment made by subsection (a) shall apply with respect to reliquidation determinations made or ordered on or after the date of the enactment of this Act.

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[Sec. 3. Section 515 of the Tariff Act of 1930 (19 U.S.C. 1515) is amended by inserting a comma immediately after "excess" (in line 7 of the statute as it appears in 19 U.S.C.) and then adding immediately before "shall" (in the same line) the following: "including any payment of interest on same,"]

APPENDIX 2

DEPARTMENT OF THE TREASURY
UNITE[illegible] [illegible]TES CUSTOMS SERVICE

PROTEST

Pursuant to Sections 514 & 515(a), Tariff Act of 1930
as amended, 19 CFR 174 et. seq. and Part 174, C.M.

FORM APPROVED O.M.B. NO. 48-RO478

PROTEST NO. *(Supplied by Customs)*

SECTION I – IMPORTER AND ENTRY IDENTIFICATION

2. DISTRICT

3. PORT OF ENTRY

4. IMPORTER NO.

5. IMPORTER OR OTHER PROTESTING PARTY

1b. DATE RECEIVED *(For Customs use Only)*

6. ENTRY NO.(S) AND DATES(S)

7. DATES(S) OF LIQUIDATION

SECTION II – APPLICATION FOR FURTHER REVIEW

(Fill in Item 1c., above, if this is a separate Application for Further Review)

8. IF YOU ARE APPLYING FOR FURTHER REVIEW IN LIEU OF REVIEW BY THE DISTRICT DIRECTOR, "X" BOX, AND COMPLETE ITEM 9, BELOW. → ☐

9. Please answer each of the following questions as these criteria must be met for approval of further review of protest, IF REQUESTED ABOVE.

YES	NO	
☐	☐	Have you made prior request of a district director for a further review of the same claim with respect to the same or substantially similar merchandise?
☐	☐	Have you received a final adverse decision from the U.S. Customs Court on the same claim with respect to the same category of merchandise or do you have an action involving such a claim pending before the U.S. Customs Court?
☐	☐	Have you previously received an adverse administrative decision from the Commissioner of Customs or his designee or have you presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise?

SECTION III – DETAILED REASONS FOR PROTEST AND/OR FURTHER REVIEW

10. With respect to each category of merchandise, set forth, separately, (1) each decision protested, (2) the claim of the protesting party, and (3) the factual material and legal arguments which are believed to support the protest. All such material and arguments should be specific. General statements of conclusions are not sufficient. If Further Review is applied for, set forth, additionally, a justification for Further Review under the criteria in 19 C.F.R. 174.24 and 174.25.

(Attach Additional Sheets, if necessary)

SECTION IV – SIGNATURE AND MAILING INSTRUCTIONS

11. NAME AND ADDRESS OF PERSON TO WHOM ANY NOTICE OF APPROVAL OR DENIAL SHOULD BE SENT

12. IF FILING, AS ATTORNEY OR AGENT, TYPE OR PRINT YOUR NAME, ADDRESS AND IMPORTER NO., IF ANY

13. SIGNATURE AND DATE

SECTION V – DECISION *(CUSTOMS USE ONLY)*

A. CUSTOMS DECISION ON PROTEST

14. This protest has been

☐ denied because:

☐ approved

☐ Untimely filed

☐ Original Customs decision reviewed and found to be correct

☐ Other, namely →

B. CUSTOMS DECISION ON APPLICATION FOR FURTHER REVIEW

15. Application for further review of Protest has been

☐ approved (This designates approval only of the Application for Further Review and does NOT refer to the Protest itself.)

☐ denied for the reason checked below

☐ Untimely filed

☐ Does not meet criteria

☐ Other, namely →

16. TITLE OF CUSTOMS OFFICER

17. SIGNATURE

Date

(Previous editions may be used)

Customs Form 19 (07-09-80)

STATEMENT OF MARJORIE M. SHOSTAK AND EUGENE J. MILOSH ON BEHALF OF THE JOINT INDUSTRY GROUP

H.R. 3159.—SUMMARY OF COMMENTS

The Joint Industry Group appears in opposition to H.R. 3159 and urges that it should not be enacted. It would reverse carefully considered decisions of the Courts permitting delayed payment of supplemental Customs duties assessed on liquidation of entries.

Duties due on liquidation or reliquidation are extra unexpected duty assessments in addition to estimated duties required to be deposited at the time of entry of imported merchandise, imposed long after the merchandise has gone into consumption, which should not be subjected to interest.

Duty bills give inadequate information to warrant payment of the amounts assessed. Information regarding the basis of the assessment must first by obtained from examination of the official entry papers on file with Customs at the port of entry.

The 25 days after issuance of increased duty bills, for receipt by Customs of payment of the increased duties assessed on liquidation, is insufficient to allow for receipt of the bill by the importer, ascertainment of the basis of the bill, and transmittal of payment of the duties, particularly when importers are not resident at the port of entry.

Importers should be permitted to exercise their rights to administrative review of the propriety of the increased duty assessment made on liquidation or reliquidation without having to deposit assessments contested.

The retroactive feature of Sec. 1 of H.R. 3159 is objectionable and inconsistent with the prospective effective date of Sec. 2, which would authorize payment of interest on refunds but only on refunds of increased duties assessed on liquidation or reliquidation.

The amount of interest and method of computation thereof should be specified. Present interest rates of 16% compounded daily, in effect from January to June, 1983, and 11% compounded daily, in effect from July to December, 1983, if imposed on increased duties assessed on liquidation or reliquidation, would impose a severe hardship on importers.

Appearance on behalf of the Joint Industry Group, a coalition of the following organizations, and on behalf of the businesses which comprise the members of these organizations:

Air Transport Association of America.
American Electronics Association.
American Association of Exporters and Importers.
American Retail Federation.
American Paper Institute.
Chamber of Commerce of the United States.
Cigar Association of America.
Computer and Business Equipment Manufacturers Association.
Council of American Flag Ship Operators.
Electronics Industries Association.
Foreign Trade Association of Southern California.
Imported Hardwood Products Association.
International Commerce Committee, Los Angeles Area Chamber of Commerce.
Motor Vehicle Manufacturers Association.
National Association of Photo Manufacturers.
National Committee on International Trade Documentation.
The Scientific Apparatus Makers Association.
U.S. Council for International Business.

STATEMENT

I am Marjorie M. Shostak, a member of the law firm of Stein, Shostak, Shostak and O'Hara, of Los Angeles, California. My firm has for many years specialized in Customs and international trade matters. I am a member of the Executive Committee of the International Commerce Committee of the Los Angeles Area Chamber of Commerce, with over 4,000 members in five counties in Southern California, and a past officer and director of the Foreign Trade Association of Southern California, with over 450 members engaged in international trade or in servicing international trade.

I am accompanied by Eugene J. Milosh, Executive Vice President of the American Association of Exporters and Importers, a nationwide association, established in

1921, with over 1,300 members engaged in importing, exporting, and servicing the international trade community, including banks, insurance companies, shipping lines, brokers and law firms.

We appear before the Subcommittee today in opposition to H.R. 3159 on behalf of the Joint Industry Group, a coalition of the following organizations, and on behalf of the businesses which comprise the members of these organizations:

Air Transport Association of America.
American Electronics Association.
American Association of Exporters and Importers.
American Retail Federation.
American Paper Institute.
Chamber of Commerce of the United States.
Cigar Association of America.
Computer and Business Equipment Manufacturers Association.
Council of American Flag Ship Operators.
Electronics Industries Association.
Foreign Trade Association of Southern California.
Imported Hardwood Products Association.
International Commerce Committee, Los Angeles Area Chamber of Commerce.
Motor Vehicle Manufacturers Association.
National Association of Photo Manufacturers.
National Committee on International Trade Documentation.
The Scientific Apparatus Makers Association.
U.S. Council for International Business.

The Joint Industry Group has worked with the Subcommittee on numerous customs-related issues, including the Customs Procedural Reform and Simplification Act of 1978, and the development, successful negotiation and Congressional acceptance of the Customs Valuation Code of the Multilateral Trade Negotiations in Geneva. Our members have an ongoing interest in the improvement of the U.S. customs system, and in procedures which encourage the continued growth and expansion of international trade.

The Joint Industry Group objects to enactment of H.R. 3159, a Bill which would authorize the Customs Service to collect interest on duties determined to be due on liquidation or reliquidation, unless payment is received by the Customs Service within 25 days after the date of liquidation or reliquidation.

This Bill would revers the decisions of the U.S. Court of International Trade and the U.S. Court of Customs and Patent Appeals in the case of *Heraeus-Amersil, Inc.* v. *United States,* 1 U.S. CIT 249, Slip Op. 81-33, decided April 24, 1981, affirmed in *United States* v. *Heraeus-Amersil, Inc.*, 671 F.2d 1356, Appeal 81-19, decided Feb. 18, 1982. These decisions hold that increased duties assessed on liquidation are not due or payable until after the 90-day protest period has expired, or if a protest is filed, 180 days after date of Customs' denial of the protest.

The Joint Industry Group objects to H.R. 3159 for the following reasons:

1. Duties due on liquidation or reliquidation are assessments made in addition to the estimated duties deposited by importers at the time of entry. Customs has authority under the law to require importers to pay duty at the time of entry at whatever rate Customs deems appropriate, often at higher rates or values than importers deem applicable. Importers compute their costs on the basis of the Customs duties required to be deposited when merchandise is entered. Assessments made on liquidation are usually unanticipated and constitute added costs not figured into the selling price of the goods. They may result from changes in classification or advances in value which Customs imposes months or years after the goods were cleared and sold. Payment of interest on larger unexpected assessments of increased duties would impose an additional severe hardship on importers.

2. The period of 25 days which H.R. 3159 would allow for receipt of payment of the increased duties is totally inadequate. Bills are issued by Customs at the port of entry, but the importers frequently reside elsewhere. An importer resident in Los Angeles may have merchandise cleared at New York or Miami, and an importer resident in New York may have merchandise cleared at Los Angeles, Seattle or New Orleans. Entries are made at ports nearest the customers of the importers for ease of distribution. The Duty Bill is therefore often delayed in reaching the importer. Delays also occur when the importer has moved, or when errors are made by Customs in putting the importer's IRS number into the computer. A 25-day period for issuance of the bill, transmittal to the importer, and for the return of the payment is unrealistic, given the usual delays in the mail now experienced.

3. The Bill states only the amount due and the port of entry and entry number, but does not supply information to the importer of the basis for the assessment.

That information must be obtained by importers by having their Customs House brokers or personnel examine the official entry papers in the Customs records at the port of entry. The 25-day period is inadequate to obtain this information, especially when the importer is not resident at the port of entry. Importers should not be expected to deposit duties without determining the basis for the assessment.

4. Importers in disagreement with increased duty assessments should be permitted to exercise their right to administrative review before having to pay increased duties assessed on liquidation. Payment of these assessments could put an importer out of business. Requiring payment of duties billed which will be cancelled on administrative review imposes a severe hardship on importers, especially smaller businesses.

5. The retroactive feature of Sec. 1(b) of H.R. 3159, imposing interest on increased duties assessed on liquidations made before enactment, is objectionable and harsh, especially when the issue is pending on administrative review.

6. The provision in Sec. 2 of H.R. 3159 to pay interest on reliquidations of entries applies only to amounts deposited as increased duties and does not include the duty deposited when the entry was filed. In fairness, if interest is to be charged, interest should be paid on any amounts refunded, not merely the increased duty portion thereof.

7. H.R. 3159 does not indicate the rate of interest or how interest would be computed, and whether it would fluctuate or remain the same if not paid over a period of time.

8. The Customs Regulations proposed by Customs in March of 1983, 48 FR 10077 et seq., would have permitted collection of excessive interest based on 30-day increments; if payments were made on the 31st or 61st day, another full month's interest would have been charged.

9. The need for H.R. 3159 is questionable. Most increased duties are paid promptly. Statistics for 1976–77 showed only 13% of increased duties unpaid 60 days after liquidation.

10. Alleged increased filing of protests merely to delay payment of increased duties should be handled by Customs with prompt denial of frivolous protests, which would trigger the requirement for payment of increased duties assessed on liquidation. Customs personnel should be increased to an adequate level to handle its work load.

11. Increased filings of protests flow from increased liquidations, and are believed to be due in part to disputes with Customs over such issues as whether or not textile products are ornamented, new value questions arising under the new 1980 valuation code, processing of back-logged entries under Item 807.00 at Miami and other ports, and liquidation of entries required at the end of 4 years under the Customs Procedural Reform and Simplification Act of 1978.

12. More adequate statistics should be required from the Customs Service regarding the number of increased duty bills per year; the number of protests filed; the number of protests allowed; and the time within which increased duties were paid, on an annual basis, so that a more meaningful analysis can be made of the need for this legislation.

The Joint Industry Group greatly appreciates the opportunity to appear before the Subcommittee and hopes that the concerns expressed will be useful to and receive the careful consideration of the Subcommittee and its staff.

STATEMENT OF THE KEMPER GROUP

This statement is submitted on behalf of the Kemper Group which is a major underwriter of U.S. Customs Surety Bonds. The Kemper Group strongly supports enactment of H.R. 3159 which would provide that increased duties assessed at the time of liquidation or reliquidation of an import are due on such date, and shall incur interest charges if not paid within a specified period. This bill would also permit the government to pay interest in those instances in which a protest of increased duties is found valid.

H.R. 3159 is needed in order to restore order and fairness to the Customs Bond system. This legislation would effectively reverse the decision reached by the U.S. Court of Customs and Patent Appeals in the case of *United States* v. *Heraeus-Amersil, Inc.* In this case the court said that an importer could delay payment of any increased duties imposed by the Customs Service at the time of liquidation until all administrative protest remedies had been exhausted. The *Heraeus* decision has enabled certain importers to abuse the system by filing frivolous protests simply to delay payment of all increased duties assessed at the time of liquidation.

The one problem which we see with this proposal is the length of time provided for payment. In our judgment interest should not begin to toll until the 45th day following liquidation, as opposed to the 25th day as provided in the bill. As a practical matter most increased duties are paid within 30 days from liquidation. Extending the period to 45 days would grant sureties 15 days to pursue those companies that had not met their obligation within the normal 30 day billing cycle.

The Kemper Group stands willing to assist the committee in its deliberations on this legislation. Any questions which you or the staff might have should be directed to Michael F. Dineen, Director of Federal Relations, Kemper Group, Suite 206, 600 Pennsylvania Avenue, S.E., Washington, D.C. 20003, Telephone 547-0120.

LEADING FORWARDERS, INC.,
New York, NY, November 21, 1983.

Subject: H.R. 3159.

Mr. JOHN J. SALMON,
Chief Counsel, Ways and Means Committee, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR SIR: Undoubtedly the current state of affairs addressed by the above bill should be redressed. However, this bill is lacking in fairness.

It proposes too short a time for payment. Anyone working with the procedures customs uses in rendering a bill for increased duties would known that it would be difficult, if not impossible, for most companies to comply.

Worse, it makes no allowance for those situations in which demands for increased duties in substantial amount are made as a result of customs error, and any fair bill would provide for relief in such cases.

This bill would require payment, protest and refund. It would be very burdensome.

Respectfully,

LEONARD M. SHAYNE,
President.

NEW YORK COUNTY LAWYERS' ASSOCIATION,
COMMITTEE ON CUSTOMS LAW,
New York, NY, November 16, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building Washington, DC.

GENTLEMEN: This statement is filed by the Committee on Customs Law, New York County Lawyers Association.

H.R. 3159 has been introduced to rectify what the United States Customs Service perceives to be an incorrect decision rendered by the United States Court of Customs and Patent Appeals (now called the United States Court of Appeals for the Federal Circuit) in *United States* v. *Heraeus-Amersil, Inc.*, 671 Fed. 2d. 1356 (1982). Presently, under the *Heraeus* decision, increased duties which are determined upon liquidation or reliquidation are not due or payable until either (1) the 90 day protest period provided for in 19 USC 1514(c)(2) has expired with no protest being filed or (2) in those situations where a protest has been filed and denied, 180 days after such denial (the statutory time period within which a civil action can be initiated in the United States Court of International Trade (28 USC 1581(a)).

Our committee supports and endorses the position espoused by the Customs and International Trade Bar Association in its statement filed with you regarding this legislation. We also urge that passage of this legislation be made dependent upon changes in the proposed language in Section 1(a) to reflect that payment of increased duties determined to be due upon liquidation or reliquidation not be required until 30 days after an importer has exhausted its administrative remedies. Failure by an importer to pay the increased duties within 30 days after it has exhausted its administrative remedies would subject the importer to the payment of interest, from said date, at a rate determined by the Secretary of Treasury. We further urge that Section 1(b) be modified so that this legislation becomes effective with respect to entries made on or after its effective date. We feel it is totally inequitable to have this legislation enacted on a retroactive basis. We do support Section 2 which provides that if a determination is made to reliquidate an entry as a result of a protest filed under 19 U.S.C. 1514 or pursuant to a court order, interest shall be allowed on any amount paid as increased or additional duties under Section 1(a), with said interest being calculated from the date of payment.

Based upon the comments contained in the statement filed by the Customs and International Trade Bar Association, as well as the specific comments contained herein, we respectfully request that H.R. 3159 be appropriately modified and that said legislation not be passed in its present form.

Very truly yours,

DONALD W. PALEY, *Chairman.*

STATEMENT OF LLOYD PROVOST, PRESIDENT, THE SURETY ASSOCIATION OF AMERICA

My name is Lloyd Provost and I am President of The Surety Association of America which is a trade association of more than 500 companies writing surety bonds throughout the United States. Included in our membership are, with one exception, all of the major writers of Customs bonds in the country.

I am here today to urge that you give favorable consideration to H.R. 3159. Our companies are most concerned about the effect of the *Heraeus-Amersil* decision. Since it was rendered they have noted a substantial rise in the number of protests of increased duties assessed at liquidation. This is disturbing to surety companies since protesting enables the importers to delay the payment of their duties until 180 days after the decision on the protest is made. Since surety companies ultimately guarantee the payment of these duties the delay permitted by *Heraeus-Amersil* hampers their efforts to insure that the importers they bond pay the duties which they owe in a timely fashion. This, of course, adversely affects the cash flow of the U.S. Customs Service and eventually the taxpayers.

We believe the enactment of H.R. 3159 will rectify the situation. If interest is imposed upon unpaid Customs bills it will no longer be advantageous for importers to protest increased duties without good cause. We believe enactment of the bill will substantially reduce the number of protests filed, dramatically speed up the payment of duties, and save the U.S Customs Service considerable expense in keeping track of the money owed to it for such long periods of time.

We do have one problem with the bill. It provides only 25 days for Customs bills to be paid before the tolling of interest. This is a fairly short period of time for Customs to provide the necessary documentation to support its bills. We believe that a more realistic time period would be 45 days. With such a change we will support this bill without reservation.

Thank you.

TVW PAPER MACHINES INC.,
Atlanta, GA, December 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. SALMON: TVW Paper Machines Inc. ("TVW") submits this statement in opposition to H.R. 3159, which would amend section 505 of The Tariff Act of 1930, 19 U.S.C. 1505, to provide that Customs duties determined to be due upon liquidation or reliquidation are payable immediately. H.R. 3159 would also permit the imposition of interest on such duties when payment is not made within 25 days of liquidation.

TVW Paper Machines Inc., a New York Corporation, is a wholly owned subsidiary of three Finnish companies: Tampella Ltd., Valmet Corporation and Oy Wartsila Ab.

H.R. 3159 ignores that the Customs Service has the authority to require importers like TVW to deposit estimated duties at the time of entry and in whatever amount it deems appropriate. Importers have no recourse against these assessments until after liquidation. It is unfair to require importer to pay increased duties when they believe that the increase is improper. The law provides that an importer may protest such an increase. Equity demands that payment of increased duties be suspended until such time as the administrative protest has been acted upon and the amount due the Customs Service has been finally ascertained. To do otherwise is to require an importer to pay substantial amounts to the government even when it believes that the government has assessed duties in an inappropriate or illegal amount and has filed or intends to file a protest challenging the increased duties. The only reasonable approach is to delay payment at least until the protest has been considered by the Customs Service. It is simply unfair to require American business to pay increased duties when the underlying legal and factual issues upon which the increase are based are the subject of an administrative challenge.

H.R. 3159 would provide that the amendment to section 505 shall take place on the thirtieth day after the date of enactment. Liquidations and reliquidations made prior to that time would be deemed to have been made as of the effective date. TVW believes that the retroactive application of the amendment to section 505 is obviously unfair. Amendments which deprive citizens of privileges should not be imposed retroactively. To do so is to penalize those citizens who have relied upon the law. Such legislation should be effective only as to events which take place after enactment and H.R. 3159 should have no effect on liquidations or reliquidations made prior to enactment. TVW notes that in situations were the Customs Service would be permitted to collect interest the legislation would be made retroactive, whereas under circumstances where the legislation would require the Customs Service to pay interest, the legislation is prospective.

If H.R. 3159 is favorably reported to the full committee, an act we believe would be a serious disservice to the international business community, the effective date should be amended to provide for prospective application only.

TVW appreciates the opportunity to express its views on this very important legislation.

Sincerely,

DONALD G. BURCH,
President.

H.R. 3174

Relating to the tariff treatment of certain telescopes not designed for use with infra-red light.

American Japanese Trade Committee,
Washington, DC, November 22, 1983.

John F. Salmon,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, DC.

Pursuant to your recent announcement, on behalf of the American Japanese Trade Committee and the Japan Telescopes Manufacturers Association, we are submitting the following statement in support of H.R. 3174, introduced by Rep. Robert Matsui, that would authorize the duty-free importation of telescopes valued at not more than $200 and riflescopes valued at not more than $50.

The principle purpose of this legislation is increased availability to American consumers/users of a higher-quality selection of imported telescopes and riflescopes at substantially lower prices. In general, American consumers/users of the lower-end priced telescopes and riflescopes will be the major beneficiaries if this bill is enacted.

The majority of low cost telescope and riflescope imports come from Japan, the Republic of Korea, Taiwan, and Hong Kong, all of which except Japan benefit under the Trade Act of 1974 from duty-free exports to the U.S. as participants in the Generalized System of Preferences (GSP) program. The duty-free GSP benefits afford these countries substantial price advantages over Japan in the U.S. marketplace, to the detriment of American consumers seeking higher-quality Japanese-made products.

Of the GSP countries, particularly those exporting riflescopes to the U.S., none have inspection systems to assure quality and uniformity like those maintained in Japan or the U.S. Additionally, it is our understanding that in the absence of strict export inspection laws, many duty-free riflescope imports are entered in the U.S. in such condition as to force importers to sell them cheaply, depressing the American market. At the same time, we understand that the production of American riflescopes has declined since GSP status was granted to "developing" countries several years ago. Quality imports from countries such as Japan are needed to stabilize the market and to provide American manufacturers the opportunity to regain their market share.

While providing American consumers higher quality imported telescopes and riflescopes at lower prices, H.R. 3174 would have minimal effect on U.S. producers. The two-tiered system of duties proposed in H.R. 3174 would, by and large, allow duty-free importation of telescopes and riflescopes outside the competitive market of U.S.-produced goods. Trade sources estimate that the average American-made telescope sells for more than $500 retail, while the average import from Japan (the major exporter of telescopes) retails for less than $200. Further, riflescopes manufactured in the United States generally retail for $75 to $150, while Japanese imports sell for less than $50. Although some U.S. riflescope producers offer products for sale below the breakpoint suggested in H.R. 3174, industry sources say U.S. manufacturers have built their reputations and businesses on higher-priced, more sophisticated equipment unaffected by the duty suspension proposed in this bill.

In addition to consumer benefits, H.R. 3174 would remove existing discriminatory tariff treatment to which telescopes and riflescopes are subject under current law. Through either oversight and/or inadvertence, riflescopes were not granted annual Tokyo Round tariff reductions of 1.5% ad valorem given telescopes and other optical instruments. As a result of the Tokyo Round, the tariff on telescopes has been reduced each year since 1979 to a current 14% ad valorem, while the duty on riflescopes remains at 20% ad valorem.

Prior to 1980, both telescopes and riflescopes were included in the single tariff item (TSUSA No. 708.53) as "Telescopes NES, Not Designed for Use with Infra-Red Light." That TSUSA category was divided into two items in 1980, with telescopes presently identified as TSUSA No. 708.58, "Telescopes NSPF, Not Designed for Use with Infra-Red Light," and riflescopes as TSUSA 708.56, "Telescopic sights for Rifles for Use with Infra-Red Light." H.R. 3174 would rectify this tariff discrimination by extending "duty-free" status to both telescopes and riflescopes without distinction between these two imports in the same general overall tariff classification of optical instruments.

We urge adoption of H.R. 3174 so that American consumers can obtain quality telescopes and riflescopes at competitive prices without regard to countries of origin and discriminatory customs practices and costs. Precedent for this legislation was set by Congress in 1980 when it recognized the consumer need for duty-free entry of prism binoculars, regardless of country of origin and whether the exporting nation was a GSP beneficiary.

Additionally, Congress should consider American importers and distributors who developed the lower-priced segment of the American telescope and riflescope market. Due to the differential customs treatment, businessmen may be forced to shift more of their purchases to Korean, Taiwanese, and Hong Kong products, resulting in fewer choices, poorer quality, and weaker constructed riflescopes and telescopes available for the U.S. consumer.

Overall, we believe enactment of H.R. 3174 is appropriate and we support its favorable consideration by your Committee.

Sincerely,

MIKE M. MASAOKA,
Washington Representative.

H.R. 3311

To suspend for a 3-year period the duty on (Bicyclohexyl)-1-carboxylic acid 2-(diethylamino) ethyl ester hydrochloride.

No comments were received on this bill.

H.R. 3312

To suspend for a 3-year period the duty on 1-Piperidinebutanol, alpha-[4-(1, 1-dimethylethyl)phenyl]-4-(hydroxy-diphenylmethyl).

No comments were received on this bill.

H.R. 3313

To suspend for a 3-year period the duty on 2-[4-(2-Chloro-1, 2-diphenylethenyl)-phenoxy]-N,N-diethylethanamine dihydrogen citrate.

No comments were received on this bill.

H.R. 3445

To suspend temporarily the duty on diphenyl guanidine and di-ortho-tolyl guanidine.

MOBAY CHEMICAL CORP.,
Pittsburgh, PA, November 18, 1983.

Subject: Duty suspension bill, H.R. 3445.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, House of Representatives, Washington, DC.

DEAR MR. SALMON: Tariff Bill H.R. 3445 introduced into the U.S. House of Representatives by Congressman Conable of New York proposes the suspension of duty until June 30, 1987 on diphenyl guanidine and di-ortho-tolyl-guanidine. We, Mobay Chemical Corporation an import supplier of both of these products would like to state our support for the passage of this bill.

The products being reviewed are raw materials which act as accelerators in the vulcanization of tire and other rubber articles. These products accelerate the rate of vulcanization and thereby reduce vulcanization time and provide for a more efficient production process of rubber products. Currently there are no domestic producers of these products. We foresee no injury to the domestic industry if the duty suspension is granted. Instead, domestic industry will benefit by lower prices for these products.

The duty being assessed on imports today is resulting in higher resale prices offered by the importing companies to domestic manufacturers. If the duty is suspended monies saved by the importing companies can be passed on or shared with the domestic manufacturers. Logically, it stands to reason that lower raw material costs to the manufacturers could result in lower prices on the end products. This would benefit other industries and consumer markets as well.

It is for the aforementioned reasons that we respectfully request that H.R. 3445 be recommended for passage. Should there be additional information that Mobay Chemical Corporation can provide to help you reach your decision please feel free to contact us.

Sincerely,

S.L. SARNIAK,
Supervisor, Import Department.
A.M. GABRIEL,
Director, Rubber Department.

H.R. 3709

To extend the existing suspension of duty on natural graphite until Jan. 1, 1988.
No comments were received on this bill.

H.R. 3727

To prohibit the President from imposing import quotas on sugar and repeal any import quotas on sugar currently in effect.

See American Farm Bureau Federation comments at p. 101.

See U.S. Council for an Open World Economy comments at p. 110.

STATEMENT OF HON. DANIEL K. AKAKA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

I appreciate the opportunity to testify before the Subcommittee on Trade today.

Mr. Chairman, H.R. 3727 proposes to eliminate import quotas on foreign sugar entering this country. Simply put, this is the wrong idea that comes at the wrong time.

H.R. 3727 would "gut" the farm program that Congress enacted in the 1981 Farm Bill for domestic sugar producers. Without the authority to impose quotas, the sugar industry as we know it in Hawaii, Louisiana, Florida, California, Texas and a dozen other states that produce cane or beet sugar would fade from existence.

This legislation comes at the worst possible time for the domestic sugar industry. The world market for sugar is suffering from heavy oversupply and below cost-of-production prices. This market situation is due to excessive price supports by sugar exporting nations which have artificially stimulated production and depressed the world price. The resulting excess production is either dumped on to the world market at prices far below cost of production or is maintained in the ever-growing world sugar reserves, awaiting eventual sale. Current world sugar stocks are now at 50 million tons; this is about twice the reserves that the experts consider necessary. As long as these stocks exist, they will continue to depress the world sugar price.

The most blatant example of price dumping of sugar occurs in the European Common Market. Through an elaborate system of direct subsidies to growers, Common Market countries stimulated sugar production in 1982 to the point where they dumped 5 million tons of sugar on to the world market. I say "dumped" because the latest available figures indicate that the Common Market produces sugar at an average cost of 27 cents per pound. Common Market countries then unload their excess production on the world market at less than ten cents per pound.

These policies are directly responsible for the problems of oversupply and depressed prices which we now face. By contrast, the United States, which does not export sugar, maintains a domestic sugar loan program that is modest by comparison. Unlike other producing nations that support sugar prices at levels at or near the cost of production, the current sugar loan rate is 17.5 cents per pound for cane sugar and 20.86 cents for beet sugar. This compares to an average cost of production of 23 cents per pound for domestic sugar cane and 24 cents per pound for domestic sugar beets. Without such a modest program, our domestic sugar industry would wither away in the face of heavily subsidized foreign exports.

Subsidies by foreign sugar producers have created serious problems for our domestic industry. Since 1977, 18 sugar beet processing plants and 6 cane refineries have been forced out of business by the conditions I have described. Sugar producers in Hawaii and other states hope to avoid the unemployment and economic losses that would result from being added to this growing list of casualties.

From the standpoint of budgetary policy, H.R. 3727 is the worst thing that could happen to the domestic sugar loan program. During the deliberations on the 1981 Farm Bill, Members of Congress who supported domestic sugar legislation worked hard to craft a program that would provide a modest level of security for growers at no cost to the federal government. The program enacted in the Farm Bill was successful in meeting these objectives—and I emphasize, at no cost to the U.S. Treasury.

The sugar loan program provides for a loan rate of 17.5 cents per pound for the current crop year. In implementing the 1983 loan rate, the Secretary of Agriculture has established a market stabilization price for cane sugar of 21.17 cents per pound. The USDA has found it necessary to establish a market stabilization price that is above the loan rate in order to minimize any chance of the Commodity Credit Corporation (CCC) acquiring sugar. The market stabilization price makes it more economical for producers to sell sugar in the market than to forfeit to the CCC. The Secretary is to defend the market stabilization price through the use of duties, fees and quotas on imported sugar.

With the current world price of sugar hovering below nine cents per pound, the Secretary of Agriculture simply could not support domestic production at the level required by the 1983 loan rate if quotas were not available. The enactment of H.R. 3727 would inevitably result in the forfeiture of sugar that has been placed under loan and the acquisition of this sugar by the Commodity Credit Corporation at high cost to the federal government.

Some rudimentary calculations allow me to reach this conclusion. Without authority to establish quotas, the Secretary would only be able to protect the loan program through the use of duties and import fees. Section 22 of the Agricultural Adjustment Act of 1933 provides the authority to impose import fees. Under section 22, the President may impose import fees of up to 50 percent ad valorem. With sugar prices of nine cents per pound, the maximum fee that could be imposed is 4.5 cents. Thus, using the import fee authority, the Secretary could support the price of sugar at 13.5 cents per pound.

The maximum duty allowed by law on imported sugar is 2.8 cents per pound. However, due to the favorable treatment that has been extended to countries qualifying for duty-free status under either the Generalized System of Preferences (GSP) or the Caribbean Basin Initiative (CBI), the Department of Agriculture estimates that only 27 percent of the sugar currently being imported is subject to duty. Only Canada, Australia, South Africa, Dominican Republic, Brazil, and Thailand pay duty on sugar exported to the U.S. Thus, because of the limited amount of duty-paid sugar that enters this country, the maximum support level that can be achieved through the use of duties and fees is less than 16 cents per pound. I have included in this figure the cost of shipping and insurance in this figure. At 16 cents per pound, the Secretary of Agriculture would be unable to defend domestic sugar at the 1983 loan rate. As I have said, the consequence of this would be the forteiture of the domestic sugar to the CCC.

The cost to the federal government of such forfeitures would be staggering. Although figures are not avilable for domestic sugar production for 1983, production is hot expected to change significantly from the 1982 level of 5.8 million tons. Without the authority to impose quotas, the Secretary of Agriculture could not defend the support price, and producers would then be encouraged to forfeit their sugar rather than sell it at the market. With domestic production expected to be 5.8 million tons in 1983, the forfeiture of this sugar would cost the federal government more than $2 billion. This does not even take into account the storage costs that would result from the government acquiring this sugar.

Under these circumstances, the United States would be stockpiling the sugar it produces at the same time that it was satisfying all of its sugar needs through imports. To engage in stockpiling at the same time that you are buying on the world market is an extremely inconsistent position. In effect, such a policy would result in the U.S. supporting the world price at a level above what it would otherwise be.

Mr. Chairman, in light of the grave problems that H.R. 3727 would create for the domestic sugar industry and the large budget expenditures that the federal government would be compelled to make if the bill were enacted, I urge this Subcommittee to defer any consideration of this legislation.

STATEMENT OF LUTHER A. MARKWART, EXECUTIVE VICE PRESIDENT, AMERICAN SUGARBEET GROWERS ASSOCIATION

Mr. Chairman and Members of the Committee, my name is Luther Markwart. I serve as Executive Vice President of the American Sugarbeet Growers Association. I would like to thank you, Mr. Chairman, and your Committee for this opportunity to testify before you today and share our views in opposition of H.R. 3727.

I appear today and testify on behalf of virtually every sugarbeet grower in the United States. A list of our membership organizations has been attached for your reference. These growers are family farmers producing sugarbeets in 14 states and supplying the raw material for 41 beet sugar processing facilities.

The Agricultural and Food Act of 1981 provided sugarbeet growers with a modest payment program from December 22, 1981–March 31, 1982 and a non-recourse loan program from October 1, 1982–September 30, 1986. The program was designed to maintain a sound domestic industry, encourage efficient production, and stabilize prices for consumers.

The world sugar market, however, continued to be extremely unreliable and volatile, as it had been in the past. Average monthly world raw sugar prices went from a low of 7.6¢/lb. in 1979 up to 41¢/lb. in 1980 and back down again to 5.9¢/lb. in 1982. It became obvious in early 1982 that a significant amount of world sugar was available and would be sold at prices well under the cost of production in any country. This created a major problem because the available duties and fees would be rendered ineffective or not applicable under such depressed price conditions.

Maximum limitations on Headnote 2 duties (2.8125¢/lb.) as set forth in Column 1 in items 155.20 and 155.30 of the Tariff Schedules of the United States and Sec. 22 fees (50% ad valorem) prevented the Administration from raising these tariffs to a level that would effectively regulate imports and avoid domestic forteitures. Another important factor to remember is that approximately 55% of U.S. sugar imports entered duty-free during 1982 from countries enjoying duty-free status granted to them under the Generalized System of Preferences.

Faced with the very real possibility of significant forfeitures of domestically-produced sugar to the Commodity Credit Corporation, the Administration had to implement an additional tool to regulate imports. The answer was to reduce the amount of sugar being shipped under the country-by-country quotas.

Sugar quotas are neither unique nor new to the U.S. or to our foreign suppliers. As with sugar, absolute quotas also exist on a number of other imported products. Since May 9, 1934 there have been continuous quotas on sugar in one form or another. The current quotas, assisted by a system of orderly shipping patterns by the major exporters, have provided the U.S. with a steady and organized supply of sugar at price levels which are reasonable to the consumer and allow the domestic program to operate effectively. The Administration has done a remarkable job administering the quotas, and I am sure that it is prepared to make appropriate adjustments to the present quotas as needs and market changes occur.

The U.S. sugar quotas have provided our traditional suppliers with their proportionate amount of an assured market at price levels above the world market prices.

The sponsor and co-sponsors of H.R. 3727 are attempting to use sugar quotas as a scapegoat for our current trade problems with the EEC, Japan, and other countries. Mr. Chairman, everyone in this room today is fully aware that the world-wide recession and the strength of the U.S. dollar are the real "culprits" of our trade problems.

There is no such thing as a free market in world sugar trade. Removing the quotas would have no mpact on the resolution of our foreign trade problems. However, the removal of quotas would create significant forfeitures and only make this country's fiscal problems worse than they already are.

The trade restrictions currently in effect by the EEC and Japan were well in place and secured prior to the May 1982 sugar quota agreement. EEC sugar shipments to the U.S. are insignificant because of current countervailing duties (all EEC countries) and anti-dumping duties (Belgium, West Germany, France). Japan, like the U.S., is a sugar importer.

May I also remind this Committee that, assuming that the beneficiaries of the Caribbean Basin Initiative begin receiving duty-free treatment on sugar beginning January 1, 1984, approximately 72.5 percent of the total U.S. sugar imports will enter duty-free in 1984. Therefore, only Sec. 22 fees will be applicable for the majority of our imported sugar. That is all the more reason to maintain our quotas.

Mr. Chairman, H.R. 3727 is designed to tie the hands of the Administration and derail an agricultural program that is presently functioning very well and at no cost to the government. As farmers and citizens of this great country, it astonishes us to see legislation like the bill before us that tampers with a program that works effectively. We ask that the Subcommittee dismiss this bill without further consideration.

Thank you very much.

MEMBER ASSOCIATIONS, AMERICAN SUGARBEET GROWERS ASSOCIATION

Big Horn Basin Beet Growers—Wyoming.
Big Horn County Sugarbeet Association—Montana.
California Beet Growers, Ltd.
Elwyhee Beet Growers Association—Idaho.

Goshen Country Sugarbeet Association—Wyoming.
Great Lakes Sugarbeet Growers Association—Michigan.
Idaho Sugarbeet Growers Association.
Minn-Dak Farmers Cooperative—North Dakota.
Monitor Sugarbeet Growers, Inc.—Michigan.
Montana-Dakota Beet Growers Association—Montana.
Mountain States Beet Growers Marketing Association of Colorado & Kansas.
Mountain States Beet Growers Association of Montana.
Nebraska Non-Stock Cooperative Beet Growers Association.
Northern Ohio Sugarbeet Growers Associations.
Nyssa-Nampa Beet Growers Association—Oregon.
Red River Valley Sugarbeet Growers Association—North Dakota.
Southern Minnesota Sugar Cooperative.
Texas-New Mexico Sugarbeet Growers Association, Inc.
Washakie Beet Growers Association—Wyoming.

JOINT STATEMENT OF HORACE D. GODFREY, COUNSEL, FLORIDA SUGAR CANE LEAGUE, AND THE RIO GRANDE VALLEY SUGAR CANE GROWERS COOPERATIVE

Mr. Chairman, Members of the Committee, my name is Horace D. Godfrey, President of Godfrey Associates, Inc., consulting firm, Washington, D.C. and I appear today on behalf of the Florida Sugar Cane League and the Rio Grande Valley Sugar Cane Growers Cooperative.

The Florida Sugar Cane League consists of Florida Sugar Producers and Processors. The Rio Grande Valley Sugar Cane Growers Cooperative is a farmer cooperative which grows and processes approximately 30,000 acres of sugarcane per year.

I appear in opposition to H.R 3727, introduced by Representatives Downey and Gradison.

The United States Congress for over 50 years, beginning with the 1933 Agricultural Adjustment Act, has endorsed legislation to protect producers of agricultural commodities in the United States from having a program authorized by the Congress interfered with by imports from foreign countries. The section of the law included in the Agricultural Adjustment Act of 1933 is referred to as Section 22. This Act has been amended several times to make the Act more clear as to the intent of Congress. The Congress has repeatedly stated its intent to protect the rights of American farmers to produce and to keep the government of the United States from expending unnecessary funds on a farm program if the effectiveness of such program is being endangered or threatened to be endangered by imports. Section 22 has been used and is currently being used on many agricultural commodities, for example, there now exists a quota on cotton; a quota on peanuts; and quotas on sugar, even though the quotas on sugar are authorized under another provision of law.

Mr. Chairman, U.S. agriculture and agricultural producers are the envy of the world. Our productive system now permits one American farmer to feed over 80 people at home and abroad. Other nations like Russia, require a major portion, and in some instances, more than 50% of their working force to try to produce food and fiber necessary for their people. The U.S. system of agriculture has traditionally been protected by tariffs and these protective tariffs have been in existence since the original tariff schedule passed by Congress. American farmers provide food and fiber to Americans at the lowest real cost of any people on the face of the earth. In addition, the efficiency of the American farmer has been responsible for industrial development by furnishing labor no longer needed to produce food and fiber to create the most industrialized nation in the world.

Look for a moment at the U.S. sugar industry—more than 15,000 farmers raise sugar. Sugarbeets are grown in 14 states and sugarcane in 4 states and Puerto Rico. More than 100,000 U.S. workers are directly involved in producing and processing domestic sugar, providing slightly more than half of our sugar needs. We import the rest from many countries around the world. Because sugar is the most politicized commodity on the globe, most nations protect their own sugar producers with support programs of one kind or another.

Producers and processors have a tremendous investment in equipment for the growing and processing of sugarcane and sugarbeets. In some areas, particularly in the sugarbeet area, if the land were not devoted to the production of sugarbeets it would probably, and more than likely be devoted to other agricultural commodities. Many of these other commodities are now in surplus and cost the government huge sums of money through price support programs, PIK programs and other incentives to reduce production. In the case of sugar, the program costs the government nothing, other than a small administrative expense. The sugar program is so designed that all loans must be repaid with interest within the same fiscal year in which they are made.

In considering proposed legislation it is absolutely necessary that the Congress consider the effects of such legislation if it becomes law. In my opinion this proposed legislation would do the following:

First: It would temporarily reduce the price of raw sugar;

Second: It would have no effect on consumer prices. History has shown that consumer prices remain high even though the price of raw sugar is reduced;

Third: It would force some U.S. farmers to discontinue sugar production and turn to the production of other crops which are now in surplus;

Fourth: It would ultimately raise the price for all sugar in the long term, because of the decrease of production in the U.S. the price would return to higher levels because the reduced production in the U.S. would bring a better balance between world supplies and world demand. It must be realized that there is no real "world price." The price quoted as a "world price" is a price for distress or surplus sugar which does not have a home. 75% of the sugar traded in the world is traded on bilateral or multi-lateral agreements at prices much in excess of the so-called "world price." For example, Cuba is the world's largest sugar producer and ships its sugar to the Soviet Union and Eastern Block countries, with a guaranteed price of 31½¢ per pound, in exchange for arms, wheat and grain;

Fifth: It would eliminate jobs and cause more unemployment compensation to be paid;

Sixth: It would increase our balance of trade deficit, because sugar would have to be imported into the U.S. to replace American sugar that will not be produced. If this bill becomes law, it will mean that U.S. dollars will go somewhere else to purchase sugar, and our trade deficit, now a serious problem, would worsen.

We have looked at what the proposed legislation would do—I raise the question, why only sugar? Section 22, as we have already discussed, applies to all agricultural commodities. Quotas are now in effect under section 22 on cotton and peanuts. Negotiated quotas, even though not under section 22, are now in effect on textiles, beef, cars, steel, chemicals, and other products and commodities. In the case of wool, high tariffs are in effect plus a payment incentive is paid to U.S. producers to increase production.

The House recently considered the so-called domestic content legislation. It was narrowly defeated in the House of Representatives, but some Members of this subcommittee voted for such legislation to protect the jobs of American workers. This proposed legislation, H.R. 3727, if it becomes law, would not protect the jobs of American workers, but would in fact deprive American workers of jobs.

The next question—who would benefit? Since consumers will not benefit, and history has shown that they do not benefit when prices are lowered, and because 75% of the sugar that is consumed by the American public is consumed in manufactured products, it would appear that the only people to benefit would be the large manufacturers of sugar containing products and cane sugar refiners, who refine raw sugar.

Mr. Chairman and Members of the Committee, all we ask in the domestic sugar industry is for equity and fair treatment. We have a loan program with a loan rate at a lower percentage of the cost of production than any other commodity. We have a loan program which requires repayment within the same fiscal year that the loan is made. No other commodity program contains this stipulation. The program is working. Loans were made last year, and all loans, with interest, were paid prior to September 30th. Users of sugar have adequate supply of sugar at a reasonable price, much less than the price charged to the users of sugar in many other countries around the world. We have provided jobs, we have an on-going industry with tremendous investment, so we ask fair treatment in relation to other agricultural commodities.

We urge that this bill be tabled by this subcommittee and not reported.

STATEMENT OF EILER C. RAVNHOLT, VICE PRESIDENT AND WASHINGTON REPRESENTATIVE, HAWAIIAN SUGAR PLANTERS' ASSOCIATION

My name is Eiler C. Ravnholt. I am Vice President and Washington Representative of the Hawaiian Sugar Planters' Association, a non-profit agricultural organization of the companies and individuals engaged in the production of sugar in Hawaii. The Hawaiian Sugar Planters' Association (HSPA) was founded in 1882 and has as its purpose the maintenance, protection and improvement of the sugar industry in Hawaii. In furtherance of this purpose HSPA operates one of the finest research stations in the world.

The sugar grown and milled by HSPA's member companies is largely refined by California and Hawaiian Sugar Company (C&H Sugar) which operates the biggest sugar refinery in the world at Crockett, California. C&H markets that sugar in our twenty-four Western-most states. In addition, C&H Sugar operates a refinery at Aiea, Hawaii which refines some 50,000 tons of sugar each year to satisfy local needs in Hawaii and those of our military in the Pacific. C&H also sells some 150,000 tons of Hawaiian produced raw sugar to Gulf and East Coast refiners annually.

Sugar is the major agricultural activity in the Hawaiian Islands where it is grown on three-fourths of our cropland. The industry provides full-time employment to some 8,000 workers. An additional 20,000 non-sugar jobs in Hawaii are dependent on the sugar industry. The industry trails only tourism and federal defense related expenditures as a source of revenue for the people of Hawaii.

Hawaii produces approximately one million tons of sugar each year. This is some 17% of U.S. production and more than 10% of U.S. consumption. Hawaii is second only to Florida as a producer of sugar but sugar is much more important to the economy of Hawaii than it is to that of Florida. It is the chief agricultural activity on our four largest islands, and 96% of the cropland on one of those, Kauai, is in sugar. Without sugar production unemployment on several of these islands would be truly devastating. It would be more than 40% on the islands of Hawaii and Kauai and almost 30% on Maui.

Despite having the world's highest yields, the Hawaiian sugar industry has been a declining one in the past decade. The industry had losses of more than $90 million in the past two years—$89 million of that in 1981 when we did not have a sugar program. Only adoption of the sugar provision in the Agriculture and Food Act of 1981, and the successful administration of that sugar support program, has prevented even more devastating losses.

Despite the guarantees of the sugar program, the Hawaiian sugar industry has found it essential to phase out some of our least productive acreage and to take other cost-cutting steps in our effort to show a profit. Some 15% of our acreage will be phased out of sugar. Only one-fourth of the acreage which we have taken out of sugar has found other crop uses, such as macadamia nuts or papaya. The remainder ties largely unused except as pasture. Exhibit #1 attached hereto details our cost-cutting efforts.

The importance of the sugar industry to Hawaii, and the vital importance of the current sugar program to our industry's very survival makes any attack on that program a matter of deep concern to the people of our State. Let there be no doubt about it, H.R. 3727 is an attack on our hard won sugar program. The use of quotas are essential to the successful and cost-free administration of that program.

While world sugar prices have increased almost three cents per pound from their low of a year ago, fee and duty authority are still not adequate to maintaining the price for sugar in the U.S. sufficient to make the marketplace preferable to forfeiting sugar under loan to the government.

Domestic sugar producers forfeited more than 600,000 tons of sugar, which was under loan to the government, in 1978 and 1979 when the loan program was inadequately defended. Adoption of H.R. 3727 would encourage far greater forfeitures because current world prices would permit defense of the program at a level some 5¢ per pound, or $100 per ton, below the amount essential to keeping the marketplace the more attractive alternative for our sugar.

The present sugar quotas provide for the cost-free administration of the sugar program. This was the clearly expressed intent of the Congress. H.R. 3727, on the other hand, is clearly designed to prevent the effective administration of the sugar program. One must wonder at its motivation.

The charge by the sponsors of H.R. 3727 that our sugar quotas injure our trade relations with countries exporting sugar to the U.S. market is totally without foundation. The quota program results in more than $500 million in added earnings to the thirty-nine countries which sell sugar to the United States market under the quota program. While some countries have protested that they are deserving of a larger quota, it is difficult to justify any allocation more fair that the present one which is based upon each country's sales to the U.S. during the period 1975 to 1981 when there were no restrictions on sales. The desire of these exporters to the U.S. market for an increase in their quota sales is understandable given the benefits inherent in such sales.

The quota sales of these nations are of some interest to the U.S. government as well. The major exporters of sugar to the United States are almost all developing nations which are in dire need of dollar earnings. The Dominican Republic, Brazil and the Philippines are the biggest beneficiaries. But other nations such as Guatemala, Panama, El Salvador, Belize, Barbados, Jamaica, Costa Rica in the Carribbean and Zimbabwe, Mozambique, the Congo, the Malagasy Republic, and Swaziland on the African continent benefit in a major way.

The Congress recently enacted the Caribbean Basin Initiative in an effort to improve the dollar earnings of Caribbean area nations. Enactment of H.R. 3727 would have an immediate and devastating effect in the opposite direction.

The nations of the Caribbean now have some 37.5 percent of the quota sales to the U.S. market. With the current differential of some 13 cents per pound between the New York delivered price and the price on the residual world market, the benefits to the region are substantial. Assuming that these prices continue, discontinuance of the quotas will mean a loss in earnings for these Caribbean basin nations of some $270 million in one year. The sugar industry of the Caribbean is not healthy or an expanding one. See exhibit #2.

What a mixed signal Congress would send were it to adopt H.R. 3727. What other exports do these nations have available to replace present earnings from sugar?

The argument has also been made that Congress must adopt H.R. 3727 to save the consumer from excessive sugar prices. However, the retail prices of sugar are lower today than they were on the average in 1980 and 1981, years in which no sugar program was in effect, and prior to adoption of the present sugar loan program. There has been no consumer outcry over sugar prices. I believe the Congress would be well advised to take the claims of certain self-appointed consumerists with a large grain of salt in this regard. Only the big industrial users and the refiners of foreign source raw sugar would benefit as prices become increasingly volatile and supplies uncertain in the face of a rapidly declining domestic industry.

The market stabilization price, the price which USDA seeks to achieve as the New York delivered price in order that our producers can achieve a return from the market in excess of the loan rate, is scheduled to increase only a quarter of a cent a year, barely one percent per year, for fiscal 1985 and 1986. No one, not even the most ardent advocate of the President's economic program, would suggest that an increase of this magnitude is inflationary.

In summary enactment of the provisions of H.R. 3727 cannot be justified on any basis.

First, it will cost the U.S. government several billion dollars in CCC payments for sugar forfeited to the government.

Second, it will drive a large share of the efficient U.S. sugar industry out of business. American sugar producers are as efficient as are our farmers in other crops. Are we really willing to turn our sugar market over to those who subsidize the production of sugar for export through high prices to their domestic consumers? I hope not. Are we saying to America's sugar producers that they must match the low wages paid to Haitian sugar workers in the Dominican Republic or workers in South Africa, Cuba or Brazil or get out of business? I hope not.

Third, enactment will seriously injure those nations which now sell sugar to the U.S. market. Such injury is substantial. A drop in their earnings will erode the export market for products then now buy from the U.S. including wheat, corn and other agricultural products.

Fourth, there is no substantial consumer benefit from such action. Almost 80 percent of our sweetener use is in the form of industrially prepared foods and soft drinks. The average American buys less than twenty pounds of sugar per year for use in the home. A 5-cent a pound saving—even if this should materialize—would save that consumer less than a dollar—about the cost of two cans of soft drinks each year. The industrial users have not, in the past, passed on any reductions in the price of sugar to the consumer. There is no reason to believe they are interested in this measure to do so in the future. The average consumer is most interested in a plentiful supply of sugar at a reasonable price. He knows that in the long run he must pay what it costs to keep efficient producers in business.

I have confidence that the Congress, upon examination of the evidence, will not take further actions in support of H.R. 3727.

EXHIBIT #1

HSPA CH sugar HAWAII SugarNews

83/12 Hawaiian Sugar Planters' Association October 24, 1983

PRODUCTIVITY, COST DRIVE PROGRESS REPORTED

Hawaiian sugar's drive to improve productivity and reduce production costs — now in its second year — continues to make progress.

Goal of the effort is to return the industry to a decent level of profitability.

The need to do so remains urgent:

- The industry is coming off two consecutive years of losses totalling more than $90 million.
- Large world surpluses continue to hold world sugar market prices at distressed levels, influencing U. S. prices.
- The federal government's loan support program at 17-1/2 cents a pound ($350 a ton) is only a safety net, not an amount that guarantees survival.
- Survival is critically important, not only to the industry's employees and owners, but to the state, as well. About 30,000 direct and indirect jobs depend on sugar.

That's why reports of progress are heartening.

Yields of sugar in late September of 11.27 tons an acre were running about a tenth of a ton more than the industry's record year of 11.12 tons set in 1965.

Dr. Don J Heinz, director of the HSPA Experiment Station, says one reason for the improvement is because the plantations are farming better. Another: the programmed expansion of new cane varieties developed by the HSPA.

Operating costs are being reduced by determination, imagination and, in some cases, by making some hard choices. A few examples:

- At TheoDavies Hamakua Sugar Co. on Hawaii Island, $2.7 million had been saved by the end of August from an already "extremely spare" 1983 operating budget. (In 1982, the company reduced operating costs $6 million below budget.)

The company is determined to reduce operating costs per ton of sugar to $350 by 1985, says Francis S. Morgan, president of Hamakua Sugar.

But it won't take short-term shortcuts to do it.

"We won't do anything in the way of cost cutting that will jeopardize the quality of our future crops," he says, adding, "bigger crops producing larger revenues is the best way to reduce costs."

- At Maui's Hawaiian Commercial & Sugar Co., a new inventory management and control system is being installed. The company expects better physical control, less waste and duplication, improved cost control and more competitive purchasing.

HC&S manager Dick Cameron also expects the system to reduce inventory capital needs by "several million dollars," a saving in interest or carrying charges worth hundreds of thousands of dollars a year.

- At Ka'u Sugar Co. on Hawaii, a new sugarcane mill installed last year at a cost of about $4 million has made the sugar company one of the industry's lowest-cost producers this year.

In fact, Marvin Tilker, of parent firm C. Brewer and Co., says he expects Ka'u Sugar to be one of the lowest-cost producers for the next decade, at least.

- *There are some hard choices made, too; ones no company likes to make, but sometimes has to.*

At Waialua Sugar Co. on the island of Oahu, all 560 production and 90 managerial employees are being furloughed without pay for 30 days beginning November 6.

And, at McBryde Sugar Co. on Kauai, the full employment force (520 people) is being furloughed for two weeks in mid-November.

In both cases, the shutdowns are to reduce projected operating losses for the year. Waialua estimates it will save $1 million, while McBryde projects savings of $700,000 in wages and operating expenses.

Furloughs also occurred last year, but on a broader scale. Fewer of them this year indicates the industry is beginning to turn the tide of battle in its struggle for survival.

Fortunately, unemployment compensation pay will temper the loss of work opportunity.

1,040,409 TONS PRODUCTION SEEN

Hawaii sugar production for the year is forecast at 1,040,409 tons (raw basis), a level more than 57,000 tons above 1982, the HSPA estimated October 10.

Although the 1983 total is 15,000 tons less than originally estimated last October, that projection was made a month before Hurricane Iwa struck the Island of Kauai and the north shore of Oahu. That storm — with winds in excess of 100 miles an hour — damaged fields and crops, cutting '83 production in the two areas.

This year's production should be slightly ahead of the five previous normal year's average (1977-81) of 1,033,500 tons. (That average excludes 1982 when the heaviest rains of this century reduced production to below a million tons for the first time since 1960.)

THE JOURNAL OF COMMERCE, Monday, November 14, 1983

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Sugar Cane Industry Sours in Caribbean

By CANUTE JAMES

Journal of Commerce Special

KINGSTON — The cane sugar industry in the English-speaking Caribbean, once the backbone of most national economies, is growing increasingly sour.

Although in some countries sugar has been overtaken by tourism, bauxite and oil as the major hard currency earner, the industry is still important to the region's weak economies.

Additional commodity news and tables appear today on Page 5A.

The sector, however, has been subject to low and inefficient production, weak markets and poor weather. The Anglophone Caribbean a decade and a half ago produced about 1.5 million metric tons of sugar per each year. This has fallen steadily to just over a half of this figure.

Yet governments are reluctant to reduce the size of domestic sugar production facilities because of the high employment content of the sector, and the hard currency earnings.

The government of Guyana recently closed two of the country's 10 mills, reducing rated capacity of 400,000 metric tons per year. The industry is this year hoping to mill 300,000 metric tons from its two crops, but the failure of the first crop to achieve its 100,000 metric ton target does not promise well.

The second crop is now under way, with the industry hoping to duplicate last year's 200,000 metric tons.

Achievement of this target hangs on such fickle factors as weather and industrial unrest in the fields and the mills.

Trinidad and Tobago's output continued to fall this year. The recently ended crop was aiming at 102,000 metric tons, but missed this by 28,000 metric tons.

The crop, affected by a late start by workers protesting payments for the previous harvest, returned 2,000 metric tons less than last years.

The governments concern at the mounting problems of the sector was reflected in an attempt to convert 13 percent of canefields to other forms of agriculture. Such changes, however, are constrained by the fact that 20 percent of Trinidad andTobago's work force depends on the industry.

This explains, in part, persistence with an industry which is reportedly losing US$800 on every ton of cane milled.

The Barbados government last year pumped US$10 million into the island's sugar industry in an effort to increase production. The sector needs to produce 120,000 metric tons per year to break even.

Actual output this year is 80,000 metric tons, the same level as last year which was said by industry spokesmen to be the worst in the past three decades.

The industry in Jamaica this year lost US$28 million, adding to outstanding accumulated losses of US$149 million.

In an effort to escape the financial quicksands, the government closed all seven mills which it owns for an indefinite period, and is attempting to reorganize the industry.

The three privately owned mills have not been affected.

The industry has a rated capacity of 400,000 metric tons per year, but this year produced marginally over 195,000 metric tons. The prolonged closure means a late start to the next harvest, suggesting that output next year will be lower.

The Jamaican government faces a dilemma in deciding on the future of the industry. Despite the accumulated debts, exports last year brought in US$102 million to the island's cash starved economy.

STATEMENT OF E. RAYMOND STANHOPE, VICE PRESIDENT, A. E. STALEY MANUFACTURING CO.

Mr. Chairman, thank you for permitting me to appear before this committee. My name is E. Raymond Stanhope. I am vice president of A. E. Staley Mfg. Co. speaking on behalf of the company. This hearing is of vital importance to Staley as a member of the corn sweetener industry. This industry comprises eleven companies with 26 plants located in 13 states having a combined employment of 15,000.

These plants have a combined corn grind capacity of 560 million bushels of corn annually. It is estimated they add about 25¢/bushel to the value corn producers receive for all their corn sales. This is a total increase of over $2 billion annually on a normal crop.

Corn refiners, including Staley, produce corn syrups, dextrose, high fructose corn syrup, modified starches and power alcohol. These products are vital to the nation's supply of food, beverages, textiles, fuel, pharmaceuticals, chemicals and building materials.

The industry is an old one but it has recently come alive with new technology for producing low-cost sweeteners from corn. These corn sweeteners compete with sugar in many industrial applications. To meet the demand for this new high fructose corn sweetener, the industry has made large capital investments in new and expanded plant facilities. Today the total capital investment for the industry is some $4 billion.

Corn sweeteners are derived from a relatively low cost and plentiful raw material and processed by means of high technology methods. As a result, corn sweeteners are the lowest-cost sweeteners in the world. In fact, the Bureau of Labor Statistics recently reported that the corn wet milling industry had increased its productivity by a remarkable 73% during the five-year period 1976–1981. In contrast, during this same period the productivity of steel increased by 13% and motor vehicles by 7%.

We estimate that the existing corn refining products may account for 1.1 billion bushels of the nation's corn crop by the end of the decade. That would approximately double today's use of corn and represent nearly 40% of the corn sold for cash basis from the 1982/1983 production.

Staley opposes the elimination of sugar import quotas as proposed by H.R. 3727 because the quota is the only defense available against the import of foreign government-subsidized sugar into the U.S. market. Although corn sweeteners are the lowest-cost sweeteners in the world, we cannot compete against foreign government subsidies which have been as high as 19 cents a pound. This is the same type of problem faced by the domestic steel, fertilizer and other industries.

Sugar is produced in some 100 or more countries throughout the world with some form of government intervention in virtually every case. The result of this government intervention around the world has caused enormous overproduction of sugar so that world prices are severely depressed. Historically, world sugar prices tend to be depressed when stocks at season's end exceed about 25% of annual consumption. World sugar stocks at the end of the current sugar year are expected to stay near 45% of annual consumption, according to the USDA.

This overproduction is caused by foreign government subsidies. The sugar regime of the Common Agricultural Policy of the European Economic Community is an example. By fixing an artificially high internal domestic price for beet suger, the EEC has encouraged enormous overproduction. They then dispose of the resulting surpluses by means of subsidized dumping into world markets. This overproduction amounted to 49% of domestic needs in the EEC in 1982/1873. EC exports accounted for 27% of the world's cash sugar market in 1982. Without the European sugar subsidy program, there would be no European sugar on the world market.

While the European Community does not normally export sugar directly to the United States, the addition of their subsidized surplus to the world stocks of sugar depresses the world price for all sugar and, hence, threatens the U.S. domestic sugar program. We have yet to find a sugar exporting country that does not subsidize its sugar exports.

Since corn sweeteners are cost effective, we are willing and able to compete against unsubsidized sugar production anywhere in the world. However, when foreign government subsidies drive sugar prices below the cost of production for even the most cost-effective sweetener producers, neither we nor anyone else can compete.

We see the present sugar loan program as the only temporary defense against the elimination of the U.S. sweetener industry by foreign government subsidies. Currently, the sugar import quota is the only means available to the Secretary of Agriculture to avoid sugar loan defaults because of unrestricted foreign government subsidized sugar imports.

In the long run, it is our earnest belief that the United States sweetener consumer is better served when his country maintains a domestic sweetener industry while his government works to eliminate unfair foreign government subsidies of foreign producers.

U.S. agribusiness and the American farmer are the most efficient food and fiber production team in the world. All we seek is an equitable environment in which to compete. We urge your disapproval of H.R. 3727 as a serious diminution of the U.S. sugar program. To approve this measure would only further encourage the already disastrous export subsidy practices of foreign producers.

STATEMENT OF E. LINWOOD TIPTON, CHAIRMAN, SUGAR USERS GROUP

Mr. Chairman, my name is E. Linwood Tipton. I am appearing today in my role as Chairman of the Sugar Users Group. I am accompanied by several other members of the Sugar Users Group who will present statements also. The Sugar Users Group greatly appreciates the opportunity to testify in support of H.R. 3727, and we thank you for permitting us to appear before you today.

The Suger Users Group is a coalition of trade associations representing industries which consume vast amounts of sugar. Its members are the American Bakers Association, the Biscuit and Cracker Manufacturers Association, the Chocolate Manufacturers Association of the U.S.A., The International Association of Ice Cream Manufacturers, the Milk Industry Foundation, the National Confectioners Association and the National Soft Drink Association. The member companies of these trade associations use about 70% of the sugar consumed in the United States.

Mr. Chairman, we support H.R. 3727 for a number of reasons. However, before enumerating those reasons, I would like to briefly summarize some background information regarding our country's sugar program.

In December, 1981, President Reagan, when he implemented the present sugar program stated, "I personally regret the necessity for signing these proclamations. The sugar program enacted by Congress to protect higher cost domestic producers will result in higher costs for all American sugar consumers." What he predicted has in fact become reality! American consumers are paying dearly for their sweetener supply.

The reason for imposing quotas was to artifically raise and hold domestic sugar prices to nearly 21 cents per pound in order to avoid the forfeiture of several hundred million dollars worth of sugar to the United States government. Under the present sugar program established by the 1981 Farm Bill the government provides nonrecourse, low interest loans to sugar producers with sugar as collateral. The loan program has only become a part of U.S. Sugar policy in recent years. It provides low cost government loans pending the actual sale of the sugar. Previously sugar growers and processors relied on private investment funds to finance their inventory.

These "loans" are made by the Commodity Credit Corporation of the Department of Agriculture and are extended to sugar processors who use their sugar as collateral for the loans. If the domestic price for sugar exceeds the loan rate, plus shipping, handling and storage costs, the processors will sell the sugar on the market and pay off the loan. If, however, the net market price is below the price guaranteed by the government program, the producers simply default on the loan. If they default on the loan they pocket the loan money and have no other obligation. Since the collateral for the loan is the sugar itself, the government ends up owning the sugar.

Moreover, under the sugar amendment in the 1981 Farm Bill, growers and processors can look to escalating "loan" levels, and consumers to escalating prices. From 1982 through 1985 the legislation requires the Secretary to establish loan provisions which set a floor for sugar prices at 17 cents per pound for the 1982 crop year; 17.5 for 1983; 17.75 for 1984 and finally 18 cents a pound for the 1985 crop. Obviously with the current world price of sugar at less than 9 cents per pound, producers will choose to forfeit their loans and allow their sugar to pass to the government unless measures such as government-imposed quotas greatly reduce sugar supplies and force consumers to pay prices above the support levels, which are already well above the world price. The differential between the world and U.S. price is now 12 cents— 133% above the world price.

In many ways, Mr. Chairman, this program has been a nightmare. First, in the area of international trade, the imposition of sugar quotas, the most restrictive and extreme form of market protection, has contributed in good part to the present trade dispute between the United States and European Community. Many nations have filed complaints over the quotas with the International Sugar Organization and with GATT. The quotas result in the United States being viewed as hypocritical. It has fought to eliminate unfair trading practices and open foreign markets to American exports, particularly agricultural products, but has imposed one of the most restrictive markets for sugar. The quotas have increased the risk of new restrictions being added on soybeans, corn, wheat, gluten feed and other items in Europe and Japan.

In testimony before the Senate Budget Committee earlier this year, the well-known agricultural economist, Gale Johnson, made the point that the United States is having difficulty convincing others of the value of free trade simply because our nation so often violates this principle itself. As Johnson noted, ". . . it is not possible to argue the recent return to a sugar program dependent upon high price supports and import quotas is consistent with GATT principles for exceptions to the use of tariffs as the only acceptable instrument for limiting imports."

Further, Mr. Chairman, the administration of the program has become a nightmare in and of itself. The actual market price has been well above the loan rate—and unnecessarily I might add.

Since the government does not want defaults on its loans not to deal with forfeited sugar, it has tried to administer the sugar program in a manner to insure that the producers will always sell in the private marketplace. To do this it established the Market Stabilization Price (MSP)—a target price at which not one pound of sugar would ever be forfeited. This has created a windfall for growers and an enormous burden for consumers. In establishing the MSP, the Department of Agriculture exacerbated the problems created by the high loan rates established under the legislation. The MSP for the 1982 and 1983 crop was calculated in the following manner:

[Amounts in cents]

	1982	1983
Loan rate	17.00	17.50
Handling and freight	2.66	2.62
Interest	.87	.85
Incentive	.20	.20
Total	20.73	21.17

As you can see, the 17 cent loan rate amounts to quite a bit more for the producer. The department determined that it would not charge interest on the loan if a producer defaulted and forfeited his sugar. Therefore, it was necessary to make certain that the market was higher than the loan rate plus interest to avoid an incentive for forfeiture. In a similar manner, the Department determined that sugar producers should be treated differently from producers of other commodities and not have to pay handling and freight if they forfeit the sugar to the government. Thus, these costs, too, were brought into the calculation of the MSP and illogically based on the extremely high costs of shipping sugar from Hawaii to the East Coast. As if this were not enough, the Department included an additional incentive factor in the MSP, to make absolutely certain that no producer would ever forfeit his sugar.

Then the Administration took actions to bring the price of sugar up to the Market Stabilization Price. In setting quotas, it decided to err on the side of safety and set them too tight to make certain that prices stayed above the already inflated MSP. On June 2, the tight quotas forced prices to 22.97 cents—2.24 cents higher than the MSP. On July 28, the market price was 22.21 cents—1.48 cents higher than the MSP. These figures contrast sharply to the world prices for sugar which averaged approximately 10½ cents per pound last summer. Yet the Department of Agriculture raised the MSP for the 1983-84 crop year by an additional half cent.

All of this adds up to a tremendous burden on the consumer. Mr. Chairman, a one-cent rise or fall in the price of raw sugar results in a change of approximately $257 million in the wholesale cost of all caloric sweeteners in the U.S. and an impact of at least $300 million on consumers due to markup practices at the retail level and the price umbrella provided to corn and low-calorie sweeteners. Further, U.S. consumers are forced to pay twice for the sugar program. First, since support levels are often far above world values (they have on occasion been triple world values in 1982/83), consumers' food costs at retail are higher during world surplus periods than they would be if prices were supported at lower levels or not at all.

Second, U.S. consumers also pay high world prices when sugar is scarce, since the U.S. program does not provide for storing reserves or for price guarantees and thus offers no protection against short supplies and high prices. This is particularly burdensome on the poor who pay such a high percentage of their income on food.

Further, Mr. Chairman, the sugar program does not make sense from the standpoint of agricultural or economic policy. There are only about 14,000 sugar producers in the United States, a mere handful compared to 870,000 wheat producers or 324,000 dairy farmers. Yet these producers, often large companies, are the beneficiaries of the most generous farm program on the books at the cost of $3 billion (or $215,000 per producer) to the public. As the following chart indicates sugar support prices are currently much higher relative to production costs than virtually all other agricultural commodities.

Percent target price is of cost of production

	Percent
Sugar	80
Wheat	56
Corn	65
Cotton	72

In short, Mr. Chairman, the program is sending exactly the wrong signal. Sugar surpluses are the root of the problem, and the sugar program encourages producers to expand production rather then to contract it. The program runs contrary to the many efforts which Congress and the President have made to lessen government intervention and wherever possible to allow free markets to work.

We support H.R. 3727 and believe it will go a long way toward correcting some of the inadequacies of the present U.S. sweetner policy. The basic problem is that the domestic price is simply too high. It is too high because the support price itself was set too high with a loan rate of 17.50 cents per pound. This already too high support price was made even more ludicrous by the way the Administration chose to administer the program. We have repeatedly offered suggestions to the Department of Agriculture as to various ways it could administer the program in a less costly fashion, but they have chosen the most costly route. One of the simple suggestions we offered was to eliminate the enormous factor for freight from the differential between the loan rate and the Market Stabilization Price. This could have been done by merely changing the loan agreements to provide that a recipient of the loan would have been required to deliver the sugar to his normal refinery if he forfeits. However, the Department of Agriculture has decided to perpetuate the high U.S. prices by ignoring these types of changes. (A copy of our letter to Secretary Block is attached.)

We believe that eliminating the options of using quotas will limit the price which can be protected to one which can be protected by factors authorized under the tariff schedules of the United States plus fees authorized under the authority of Section 22 of the Agriculture Stabilization Act. This would currently be 18 to 19 cents per pound and would be a reasonable level to protect domestic producers. This would not necessarily increase the probability of forfeiture to the government. As already pointed out, the terms of the loans could be changed, but even if the loan terms were not altered, the risk of budget exposure would be minimal.

Another way of solving the problem would be a direct reduction in the loan level. This we would favor also.

[Attachment]

Sugar Users Group,
Washington, DC, August 11, 1983.

Re Reducing the Differential Between the Loan Rate and the Market Stabilization Price for Sugar.

Hon. John R. Block,
Secretary of Agriculture,
U.S. Department of Agriculture, Washington, DC.

Dear Secretary Block: The Sugar Users Group urges you to change the method of administering the sugar loan program for the 1984 marketing year to provide a smaller differential between the loan rate and the Market Stabilization Price which is currently protected by duties, fees, and quotas. The Market Stabilization Price, since the inception of the program in 1981, has been set at a level to insure that all loan recipients have an economic incentive to pay off the loan, redeem the sugar, and sell it on the commercial market. Thus, it is very unlikely that any sugar will be forfeited to the government.

In view of the current large budget deficits, we understand your objective of minimizing the risk of forfeitures and the attending budget obligations, but we believe this can be accomplished with a much smaller differential and therefore, a lower Market Stabilization Price than has previously been the case.

The specific proposal to accompiish this is outlined in the attached document. If adopted it would:

Provide loans to processors at the rates specified in the law.

Reduce the Market Stabilization Price by reducing the differential between the loan rate and the Market Stabilization Price.

Provide the same incentive to repay the loans as is provided by the present techniques.

Hasten the removal of quotas.

The present procedures have resulted in domestic sugar prices considerably above the level necessary to avoid loan forfeitures and consequential budget outlays. Our proposal will reduce raw sugar prices by over 3 cents per pound and save consumers over $1 billion per year.

We urge your adoption of the program outlined in the attached document.

Mr. Secretary, in addition to the unnecessary costs imposed by the present procedures for determining the Market Stabilization Price, consumers have suffered further unnecessary burdens due to the fact that actual market prices have been consistently held well above the already too high Market Stabilization Price without taking counterbalancing action. This program needs and deserves your personal attention.

On behalf of:

E. Linwood Tipton,
Chairman, Sugar Users Group.

The Sugar Users Group, including:
American Bakers Association.
Biscuit and Cracker Manufacturers' Association.
Chocolate Manufacturers Association.
International Association of Ice Cream Manufacturers.
Milk Industry Foundation
National Confectioners' Association.
National Soft Drink Association.
And other interested groups, including:
Association for Dressings and Sauces.
Congress Watch.
Consumer Federation of America.
Consumers for World Trade.
Food Marketing Institute.
International Jelly and Preserve Association.
National Association of Convenience Stores.
National Food Processors Association.
National Independent Dairy Association.
National Restaurant Association.
National Single Service Food Association.
Processed Apples Institute.
Public Voice for Food and Health Policy.
Retail Bakers of America.
U.S. Cane Sugar Refiners' Association.

CURRENT LOAN RATES AND THE MARKET STABILIZATION PRICE

A price support program for sugaracane and sugar beets was included in the sugar title of the Agriculture and Food Act of 1981. The program is specified in terms of purchase and loan rates, and applies to sugar beets and sugarcane harvested from the date of enactment (December 22, 1981) through the 1985–1986 crop year. To be eligible for the loan program, a processor must agree to pay the minimum support price to any grower who supplies sugar beets or sugarcane. For sugar produced from 1982–1983 through 1985–1986, price are supported through a nonrecourse loan program incorporating annually increasing loan rates. The rates for raw cane sugar are 17.00, 17.50, 17.75, and 18.00 cents per pound for the successive crop years. Beet sugar loan rates are determined in relation to those of cane.

MARKET PRICES ABOVE LOAN RATE

The critical difference between this and previous sugar support programs lies in the basis for design of the applicable regulations. Since there was no provision in the Reagan budget for the sugar program, the Administration instructed USDA to administer the program in such a manner that there would be no outlays of funds whatsoever. As a result, the domestic price for raw sugar is being controlled at levels significantly higher than the support price in order to assure that forfeitures will not occur.

This wide dispaity between the support level and the Market Stabilization Price is extremely costly to manufacturers and consumers. We believe, however, that modification of the administrative mechanism can accomplish the dual purpose of reducing the high cost of domestic sugars while at the same time minimizing risk of loan forfeiture and its consequent non-budgeted expenditures.

From the international trade viewpoint, the changes discussed below would also enable a more rapid return to a free trade environment through the earlier elimination of the country by country quotas, thus improving our trade relations with other countries.

The following table illustrates the calculation of the Market Stabilization Price for the 1982-1983 fiscal year:

Calculation of market stabilization price

	Cents per pound
Loan rate for raw sugar cane	17.00
Transportation costs from Hawaii to gulf or east coast	2.66
Interest at 10.25 percent for 6 months	0.87
Incentive to market sugar	0.20
MSP (NY)	20.73

When the 1981 bill was passed, it was generally believed that the 17 cent loan rate for 1982-1983, at the mill, would translate into a minimum raw sugar price of about 19 cents at coastal refineries in New York and elsewhere, and about 17 cents at the mill. But to insure that all sugar under loan would be redeemed rather than forfeited, USDA set the Market Stabilization Price at 20.73 cents—high enough to cover even Hawaiian sugar shipped to the East Coast.

By implementing the program in this manner, domestic price levels were moved to a higher support level than was probably envisioned by Congress. The last program for domestic sugar producers was for the 1979 crop, for which there was a 13 cent loan rate and a 15 cent market price objective. Other ways of preventing any cost to the government were suggested by the Sugar Users Group at the time of drafting of regulations, but were not adopted by USDA.

SUGGESTED CHANGES

As presently administered, the differential between the loan rate and the Market Stabilization Price is in excess of what is needed. Two modifications should be made in the program.

1. Charge interest on forfeiture as well as on redemption, and
2. Allow the Secretary of Agriculture to require that the processor store the forfeited sugar at the expense of the Commodity Credit Corporation, pending sale by the Corporation, and that upon sale by the Corporation, the processor deliver the raw sugar from storage to the plant where the sugar would normally be refined.

INTEREST

Processors currently pay interest when the sugar under loan is redeemed, but if the sugar is forfeited, there is no interest payment. Therefore, if interest charges are required to be paid on forfeitures as well, the Market Stabilization Price could be reduced by the amount currently allowed for interest. The program is now being administered in a way that there will be no forfeitures and, under our proposal, there would be no change in this policy. Since there would continue to be no sugar forfeited, the obligation of paying interest on forfeited sugar would not in fact result in any penalties on processors.

FREIGHT

Under the present program, if a processor repays the loan, he must bear the transportation cost from the mill to the refinery, but if he forfeits the raw sugar, he has no further cost. This freight factor is a major contributor to the excessively wide differential between the loan rate and the Market Stabilization Price.

Under our proposal, the processor would receive the full loan rate specified in the law and would be entitled to that sum for the duration of the loan period. However, if he forfeited, upon instruction from the Secretary of Agriculture, he would be required to deliver the raw sugar to the refinery where it would normally go, just as he is required to do if he redeems the loan.

Under this proposal, the Market Stabilization Price could be maintained at a level much nearer the loan rate. There would be no added cost to the processor because the Market Stabilization Price would still be maintained at a sufficiently high price to provide an incentive for redemption instead of forfeiture.

SUMMARY

Under our proposal, the Market Stabilization Price could be greatly reduced without affecting the amount of the loan and without increasing the likelihood of forfeiture. Based on the factors used to calculate the Market Stabilization Price for the 1982–1983 marketing year, the Market Stabilization Price could be reduced from 20.73 cents to 17.20, a 3.5 cent reduction, as illustrated in the following table:

Revised Market Stabilization Price

	Cents per pound
Loan Rate for Raw Sugar	17.00
Transportation Costs from Hawaii to Gulf or East Coast	0.00
Interest at 10.25 Percent for 6 Months	0.00
Incentive to Market Sugar	0.20
MSP	17.20

The purpose of the proposed program is to provide the full loan rate specified in the law. The government also wants to make certain that no sugar is forfeited to the Commodity Credit Corporation. Our proposed modifications will allow both these goals to be met at a substantially lower Market Stabilization Price, thereby saving consumers nearly $1 billion, while simultaneously providing sugar processors with the intended loans and avoiding Commodity Credit Corporation acquisitions.

STATEMENT OF DAVID C. CARTER, PRESIDENT, UNITED STATES BEET SUGAR ASSOCIATION

My name is David C. Carter and I am President of the United States Beet Sugar Association, a trade association made up of this country's beet sugar processors. A list of Member-Companies is attached.

In 1983, more than 21 million tons of sugar beets were produced in some 14 states. From that crop, we are processing nearly 6 billion pounds of refined sugar, enough to supply the yearly needs of 85 million Americans. Nearly 100,000 people earn their livelihood from the domestic sugar industry, including farmers, agricultural workers, service and management employees and thousands of members of organized labor.

As processors and marketers of sugar, we are in the very forefront of the impact created by the domestic sugar program included as Title IX of the 1981 Food and Agricultural Act.

The interdependence between beet growers and processors is unique. It is symbolized by the "participating" contracts that have traditionally existed between them. In general, the contract calls for the processor to accept all of the sugar beets grown on a specified number of acres, process them and market the refined sugar. The sugar dollar earned in the marketplace is then divided between processor and grower, with the latter getting about two-thirds of the net proceeds. In three instances, the processing firms are cooperatively owned by the growers themselves.

It is the farmers, of course, who are the designated beneficiaries of the current sugar price support loan program. However, any action impinging on the effectiveness of the program impacts on both the grower and the processor. Thus, we appreciate the opportunity to appear and express our views on H.R. 3727.

I feel reasonably certain the Chairman does not want this hearing to be a forum for debating the virtues of the current sugar program. It was debated, reviewed, analyzed and scrutinized fully during consideration of the 1981 farm bill. As a result of some genuine compromises on both sides of the issue, a carefully constructed program was ultimately approved.

There is something special about this sugar program. Throughout much of this Session of Congress, we've heard about the need to repair and make adjustments in various segments of the 1981 farm bill. There was a problem with the tobacco section; changes were needed in the peanut program; the wheat and feed grains programs are still under review; and only last week there was continued tinkering with the dairy section.

The sugar program, however, is working! It is providing a fair return in the market place for domestic producers and it has resulted in fair and stable prices to sugar consumers.

The legislative history of this program repeatedly makes clear that Congress is insistent that the program be administered in a manner that will result in no cost to the Government. This means, of course, that sugar under loan to the Commodity Credit Corporation should not be forfeited to Government ownership.

Approval of H.R. 3727 would negate that mandate. Further, in my opinion, H.R. 3727 is discriminatory and based on false and misleading assertions and premises.

The authors of this bill have written, for example, that import quotas on sugar are "not only the most extreme and disruptive form of market protection, but [are] also in direct contradiction to U.S. trade policy."

With all due respect, Mr. Chairman, my response to that charge is "whiskbrooms!"

Whiskbrooms and clothespins.

Whiskbrooms and clothespins and motorcycles and steel.

These are all from the list of items on which this country has either a tariff rate or absolute import quotas. These items have in common the fact they are not agricultural products. And, while I certainly don't want to discuss the relative merits of those quota programs, I know for sure that those particular quotas on those particular items are not essential to the successful administration of a commodity loan program enacted by the United States Congress. The quotas on sugar are, however, an integral and essential administrative tool in the success of the U.S. sugar program.

Mr. Chairman, the last time I appeared before this distinguished panel was June 15, 1981. At that time, we heard the representative of the U.S. Cane Sugar Refiners' Association warn that sugar legislation under consideration at the time "specifies a loan level of 19.6¢ a pound. But," he cautioned, "in order to ensure that none of the sugar would be forfeited to the government, it would be necessary for the government to maintain the price of sugar . . . at somewhere near 25¢ to 26¢ a pound."

He was talking about a loan price/market stabilization price differential of 5.5¢ to 6¢ per pound.

September 22, 1981, Representative Thomas Downey—a member of this Subcommittee and a principal sponsor of H.R. 3727, wrote in a "Dear Colleague" letter to his fellow Members "an 18¢ nonrecourse loan program [for sugar] would require the federal government to raise domestic sugar prices to at least 25¢ per pound . . . in order to avoid tremendous budget costs." In that statement he's predicting a differential of 7¢, up from the Cane Refiners' prognosis of 5.5¢ to 6¢.

Comes now October 23, 1983 and Mr. Downey has written another Dear Colleague seeking co-sponsors for H.R. 3727. He writes: "The farm bill specified a sugar loan rate of 17¢ per pound for the 1982 crop, yet the USDA determined that the market price should be maintained at nearly 4¢ above the loan rate in order to avoid the government's acquisition of sugar through the forfeiture of loans. Many experts believe that this price is higher than necessary." (End of quote.)

The fact is, for the 1982 crop, the loan rate was 17¢ and the Market Stabilization Price was 20.73¢—the difference was 3.73¢ The point is, that sponsor of H.R. 3727 was predicting a much higher differential when that suited the purpose. And, now, when the program has been enacted and the differential ends up at about half what he predicted, he's now quoting "many experts" as saying it's too high.

For the record, Mr. Chairman, it should be noted the 20.73¢ Market Stabilization Price for raw sugar from the 1982 crop compares with an average cost of production for raw cane sugar in this country of 21.85¢ for the 1981 crop, according to the U.S. Department of Agriculture.

It has always been characteristic of consumers in this country to expect the price of things we buy to cover the cost of their manufacture, plus a reasonable profit. We know anyone who constantly sells below his cost of production will very soon be out of business and, while all of us are bargain hunters at heart, we don't consciously want to contribute to anyone's bankruptcy. Somehow, however, these same principles don't apply when it comes to agricultural commodities.

Next month, December 22 to be precise, we'll see the second anniversary of the sugar program being signed into law. In that two year period, Mr. Chairman, the

New York spot price for sugar averaged 21.49¢—3.36¢ below the average of the two years immediately prior to the advent of the program.

Further, price stability is important—not only to producers, but especially to consumers.

During 1980 and 1981—before the program—the difference between the highest and lowest price for sugar was 29.68¢ per pound. By 1982, however, with the program just getting started, that fluctuation was reduced to 6.22¢. And, for 1983 to date, there's only been a 2.2¢ per pound difference between the high price and low price of sugar.

Proponents of H.R. 3727 maintain the cost to Americans for each one-cent increase in the price of sugar is "at least" $300 million a year. "Thus," they speculate, "the added and unnecessary cost resulting from the present program is well over $1 billion in 1983 alone."

Independent economic studies completely discount such wild assertions and I've attached hereto a paper entitled the "Myth of Math" which points out the error of their multiplication. Essentially, those who attach such large numbers to the so-called cost of the program in an attempt to discredit it, begin with erroneous figures, based on misleading assumptions. They then compound the error all the way through their "formula". It's akin to a navigator leaving San Francisco going to Hawaii, but cranking in a one degree error in his initial heading. By the time he's traveled the 3,000 miles toward Hawaii, he's missed the island by 2,000 miles. Thus, their $300 million per penny per pound is erroneous at the start and proceeds to miss the mark by several hundred million dollars.

In the meantime, Mr. Chairman, it should be noted that three-quarters of all sugar consumed in this country is in the form of prepared and processed foods and beverages. I challenge anyone to show the Committee a single example of the price of any of these sugar-containing product groups that has consistently come down as the result of decreases in sugar prices.

The price of these products go up, Mr. Chairman, blaming the increase on sugar costs. But, we've never found any that came down when the price of sugar decreased.

In the final analysis, of course, H.R. 3727 won't change the loan rate for sugar and it doesn't mandate any change in the Market Stabilization Price. All it will do is make it impossible for the Department of Agriculture to operate the program in the manner the Congress instructed and the Government will assume ownership of massive amounts of sugar.

Finally, I hesitate to quote the Chairman of this Subcommittee from one of his own speeches, particularly because I'm afraid I can't do the delivery justice. At that risk, however, I wish to read from the Chairman's remarks on the Floor of the House November 3, 1983. He said:

"But we should not be throwing away 200 years of experience about how things ought to be decided. . . . The Congress, in order to prevent political manipulations on serious questions like this, set up a bi-partisan, quasi-judicial, independent agency, independent of anyone else, to decide when injury had been inflicted upon American industry."

The Chairman's views that day were seconded by another distinguished Member of this panel, Congressman Frenzel. He had the floor next and said, in part:

"The previous speaker has indicated that the authority and the capability has been given by the Congress to the International Trade Commission. This is the Agency that should make that decision."

Obviously, neither the Chairman nor Mr. Frenzel were talking about sugar on November 3.

But the U.S. International Trade Commission—the very body both said should decide these cases—was talking about sugar on May 19, 1982 when, by a unanimous 6–0 vote they determined imports of foreign sugar "interfere or threaten to interfere with the operation of the domestic sugar program." Thus, the USITC put its stamp of approval on the President's action of May 5, 1982 (Proclamation #4941), imposing quotas on foreign sugar imports. Further, Mr. Chairman, the USITC forwarded to the President on June 7, 1982, their recommendations based on their investigation. Included in their recommendation was—and I quote: "maintain the quota system set forth in Proclamation 4941 until such time as duties and fees, which are preferred to a restictive quota, are once again adequate to protect the rice support program."

Obviously, the limitations of the fee system under Section 22 of the Agricultural Act of 1949, preclude achievement of the Market Stabilization Price when world sugar, as measured by the number 11 spot price, is below 13.0¢ per pound. The 13.0¢ may be higher than this panel will hear about from proponents of H.R. 3727, but I call the Chairman's attention to the fact that fully 80 percent of our imports now arrive here duty-free. Therefore, only 20% of the 2.8125¢ maximum duty should be used in calculating that amount to be added to the so-called world price.

In conclusion, therefore, we respectfully urge that H.R. 3727 be rejected.

(1) H.R. 3727 is based on false assumptions. It's adoption would discriminate against sugar, an important U.S. agricultural commodity and would negate the Congressional mandate that the sugar program be operated at no cost to the Treasury.

(2) Quotas are a necessary tool that the Administration may be required to use in order to achieve the objectives of the U.S. sugar program.

(3) The sugar program is working as Congress intended; sugar prices to consumers are lower than they were prior to the program's enactment and producers are receiving a fair return.

We believe that a thorough review of the sugar program will be held in conjunction with the enactment of a 1985 Omnibus Farm Bill. Until then, the industry is struggling to carry out its responsibility to the country and to consumers. We suggest that it be permitted to do so under existing law and regulations.

Thank you.

THE UNITED STATES BEET SUGAR ASSOCIATION MEMBER COMPANIES

The Amalgamated Sugar Co., Ogden, UT
American Crystal Sugar Co., Moorhead, MN
Holly Sugar Corp., Colorado Springs, CO
Michigan Sugar Co., Saginaw, MI
Minn-Dak Farmers Cooperative, Wahpeton, ND
Monitor Sugar Co., Bay City, MI
Southern Minnesota Beet Sugar Cooperative, Renville, MN
Spreckels Sugar Division (Amstar Corp.), San Francisco, CA
Union Sugar Co., San Francisco, CA

The Myth of Math

Opponents of the domestic sugar program make sweeping claims about consumer costs and savings. Their basic propaganda blast says that every penny increase in the "price" of raw sugar adds $300 million to consumer food "costs".

This will show how these program opponents try to legitimize that inaccurate and intellectually dishonest statement. (It's sort of a Math Myth.)

Their charge: "Every penny added to the price of raw sugar adds $300 million to the consumer food bill".

The Math Myth formula: They say each of 225 million Americans eats 125 pounds of sweetener per year. When they multiply those sums times 1¢, it amounts to $281 million. By their formula you round that up to $300 million.

An explanation of the facts takes a bit of doing. But it's worth it.

Yearly sugar consumption for Americans actually amounts to less than 75 pounds (not 125). The 125-pound figure—used in their formula—approximates total sweetened consumption. But almost 40 percent of that total is composed of non-sucrose sweeteners, largely derived from corn (fructose, dextrose, etc.).

Anti-program demogogues have you incorrectly assume that the price of non-sucrose sweeteners moves in amounts exactly equal to that of sugar. Not true.

High fructose corn syrup currently is discounted 8 or 9 cents per pound below bulk sugar. A sugar program does affect the price and demand for corn sweeteners. And the corn industry does benefit. But high fructose corn syrup has its own market and its own competitive forces—corn sweetener against corn sweetener.

With usage and market correlation facts straight, one should now disabuse the notion (as they would have you assume) that any lower cost for raw sugar is automatically passed along to the ultimate consumer. The evidence is clearly to the contrary.

For example, raw sugar prices averaged 19.73 cents per pound in 1981—down nearly 35% from the 1980 average (30.11 cents). During the same period, the price of 14 major sugar-containing foods and beverages *increased* nearly 9%. More than two-thirds of the sugar Americans consume is contained in processed foods. Only 20 pounds of sugar per year is purchased for each person's home consumption. If the price of sugar is 10 cents per pound higher (highly unlikely), that amounts to an annual cost per consumer of only $2.

Their charge goes something like this: Because of the "fact" that 1¢ increase in price equals $300 million "cost" to consumers, then the overall, or total consumer "cost" of the program equals $3 billion per year.

The Myth of Their Math: The U.S. sugar program loan level is 17.5¢. Current world price, about 9¢, a difference of 8.5¢ × the $300 million previous "fact" equals $3 billion.

As pointed out above, lower raw sugar prices are not automatically passed on to consumers. Otherwise, the consumer would have (by their Myth Math) saved $3 billion a year on sugar between 1980 and 1982 (1980 average world price, 30¢, 1982 average price, 20¢).

But more to the point: The difference between domestic sugar prices and those quoted from the volatile dump market of the world is not a relevant basis for measuring consumer "costs".

First, the world price is a dump price for homeless sugar. In times of scarcity, it's high. In times of world glut—like now—it's low.

Second, the so-called "world" price ignores loading, insurance and transportation costs and unloading charges associated with bringing that sugar here. So, at a minimum one has to add a few pennies per pound to the world price to even get it to the U.S.

Finally, if imported sugar is so much cheaper for consumers, why, during the period of no domestic program, was the price to consumers in the Northeast 3¢ to 5¢ per pound higher than to consumers in the West where the domestic industry operates?

CONCLUSION

The opponents of the U.S. sugar program use vodoo economics or mirrors to justify their Myth Math which assigns defineable consumer "costs" and savings to their stand on the issue.

Consider these numbers: 1) a penny per pound for sweetener could mean as much as $20,000,000 per year to a purchaser the size of Cola Cola; 2) up to $8,000,000 to Pepsi; and 3) about $2,000,000 to ITT. A penny per pound on a 20,000 ton sugar cargo titled to a trader-speculator in New York amounts to $400,000.

These are the "consumers" who are most interested in doing away with a program to maintain the U.S. sugar industry. A penny per pound, at most, is a direct cost of 20¢ per year to the housewife per family member. Little enough to pay for an assured supply, little enough to pay to keep a domestic industry afloat to serve as an employer, a taxpayer, a purchaser of American goods and services and a provider of a strategically important food product.

STATEMENT OF NICHOLAS KOMINUS, PRESIDENT, UNITED STATES CANE SUGAR REFINERS' ASSOCIATION

Mr. Chairman, my name is Nicholas Kominus. I am the president of the United States Cane Sugar Refiners' Association, 1001 Connecticut Avenue, Washington, DC 20036.

Our association represents all of the Nation's independent cane sugar refiners. A list of the refiners for whom I appear is attached to this statement.

Independent cane sugar refiners are not involved in the production or processing of sugarcane or sugar beets. They refine sugar that is produced in the United States, and sugar that is imported from foreign nations.

They operate ten refineries in eight States—Florida, Georgia, Illinois, Louisiana, Massachusetts, Missouri, New York and Texas. In addition, they operate a number of support facilities in other States.

Mr. Chairman, I shall be brief. I do request, however, that this entire prepared statement and a memorandum entitled, "Sugar Price Supports are too High," a copy of which is attached, be made a part of the record.

I appear here today in support of H.R. 3727, a bill to eliminate import quotas on sugar.

In 1981, the House of Representatives adopted an amendment that eliminated the sugar program from the farm bill (the House also defeated sugar bills on the floor in 1978 and 1979).

Subsequently, the House Conferees ignored the will of the House and restored the sugar program by acceding to the Senate Conferees. This proved to be a costly move. The sugar price supports included in the conference report were far too high, and totally out of touch with the reality of the sugar market.

As a result, the administration has found itself in the difficult position of attempting to maintain the price of raw sugar in the United States two to three times higher than the world price (on November 9, the United States price was 21.97 cents a pound, compared to the world price of 8.65 cents).

Initially the administration hoped to avoid the acquisition of sugar through the forfeiture of CCC loans by increasing the import duty (from .625 to 2.8125 cents) and by imposing an import fee.

The statutory limits on the import duty and fee made it impossible, however, to sustain the market at the unrealistically high support levels.

The administration was, therefore, forced to abandon the import fee and impose restrictive import quotas.

High sugar price supports, and the quotas they have spawned, are costing American consumers billions of dollars, and aggravating the budget deficit by costing the Treasury millions of dollars in lost revenue because of the shift from import fees to quotas.

From the standpoint of trade policy, the sugar quotas are a disaster.

They are hampering attempts by this subcommittee, and others, to fight protectionism and liberalize world trade.

Our sugar quotas are generating three distinct problems insofar as United States trade is concerned.

First, high sugar price supports have brought about a drastic decline in sugar imports, thereby reducing the sugar exporting nations' ability to earn the dollars needed to purchase the products of American industry and agriculture.

Second, high sugar price supports have encouraged the production of high fructose corn syrup (HFCS) and its byproducts, corn gluten feed and meal. The byproducts have been shipped to the European community in increasing amounts and have further strained our trade relations with the EC.

Third, high sugar price supports have led to sugar import quotas that permit nations, such as Japan and the EC, to hamper United States' attempts to liberalize agricultural trade by arguing that we do not practice what we preach.

SUGAR EXPORTING NATIONS

High sugar price supports are pricing sugar out of the sweetener market by encouraging the production of the competing sweetener, HFCS. They have also led to increases in sugar production in some regions of the United States. These increases have been more than enough to offset the declines in sugar production in some high-cost regions.

All of this has led to a drastic decline in sugar imports.

Over the years, the United States represented an important market for the sugar exporting nations of the world, most of which are developing and located in the Caribbean and Latin America.

At one time, the United States was the largest sugar importing nation in the world. This is no longer true because of the increasingly protectionist sugar policy we have adopted.

During the fifteen year period, 1967/81, sugar imports averaged 5.1 million tons a year. Even during the last five years of the old Sugar Act, 1970/74, sugar imports averaged 5.5 million tons a year.

Unfortunately, sugar imports, which totaled 5 million tons in 1981, dropped to 2,964,000 tons in 1982 because of the Government's restrictive quotas.

Sugar imports are also accounting for a smaller percentage of the total sugar market. In 1982, 31 percent of the sugar distributed in the United States was imported, down from 46 percent a decade earlier.

Most nations received a fiscal year 1982/83 quota that was considerably smaller than its shipments to the United States in 1981.

The imposition of quotas drastically reduced the quantity of sugar most nations could ship to the United States. In addition, the imposition of quotas had a severe impact on world market prices, which for most nations is only partially compensated for by the higher prices received for shipments to the United States.

More importantly, the long-term impact of high sugar price supports is that demand for imported sugar will continue to decline. And the so-called "quota premium" is temporary—as the world price goes up, it disappears.

The sugar exporting nations of the world represent an important market for American industry and agriculture. We have a favorable balance of trade with most of these nations.

More importantly, the prospects for expanding trade with these nations are very favorable.

The population of Latin America and the Caribbean is expected to increase by over 200,000,000 people by the year 2000. Thus, in a short 16-year span a nation the size of the United States will, in effect, surface south of our border.

These nations cannot, however, buy from us if they cannot sell to us. Trade is a two-way street. Sugar is among a handful of products they can efficiently produce for export. And yet our sugar policy prohibits them from fully exercising their comparative advantage in sugar production.

EUROPEAN COMMUNITY

High sugar price supports, as mentioned earlier, stimulated a tremendous increase in HFCs production. This has, in turn, led to a large increase in the production of corn gluten feed and meal, which are byproducts of the HFCs process.

Most of this corn gluten feed and meal has been shipped to the European community. Shipments increased from 790,000 tons in 1974 to an estimated 2,800,000 tons in 1983.

EC officials contend that imports of corn gluten feed and meal from the United States have displaced EC grain sales within the EC. As a result, they contend that they have had to ship grain and flour to other nations, and thereby displace U.S. grain exports.

EC officials identify our high sugar price support, which stimulate HFCs production, as the source of the problem. The problem will intensify unless there is a change in our sugar policy.

OTHER TRADE PROBLEMS

Just prior to the imposition of quotas, Reuters reported: "Quotas on the amount of sugar the U.S. imports, currently being considered by the Reagan administration, will make it more difficult for the U.S. to diffuse trade barriers in other countries, U.S. Trade Representative Bill Brock said. Answering questions after addressing the Newspaper Farm Editors of America, Brock said the quotas will, 'make it more difficult,' to argue against trade barriers in the European community and Japan."

Many nations did file complaints over the sugar quotas with the International Sugar Organization and GATT. They contended that the quotas violated the spirit, if not the letter, of the International Sugar Agreement.

CONCLUSION

The world economy has entered an extremely dangerous period. Economic growth rates are low. Many nations are running high budget deficits. Foreign exchange rates are distorted.

The temptation to embark on protectionist policy is great. Yet, if America is to continue to grow and prosper in the world market, we must not succumb to that temptation.

Although short-term benefits might be attractive, the long-term costs represented by lost market opportunities would be far greater. Rather, we must seize this opportunity to work for a more harmonious relationship with our trading partners.

The best way to begin that dialogue is to candidly face up to the contradictions and inconsistencies inherent in our own policies, exemplified by our policy toward domestic sugar production.

Sugar quotas should be eliminated.

We respectfully urge the subcommittee to adopt H.R. 3727.

Thank you.

UNITED STATES CANE SUGAR REFINERS' ASSOCIATION

Colonial Sugars, Inc., PO Box 1646, Mobile, AL
Imperial Sugar Co., Sugar Land, TX
Refined Sugars, Inc., 1 Federal Street, Yonders, NY
Revere Sugar Co., 210 Clay Avenue, Lyndhurst, NJ
Savannah Foods & Industries, Inc., PO Box 339, Savannah, GA
Supreme Sugar Co., One Shell Square, New Orleans, LA

SUGAR PRICE SUPPORTS ARE TOO HIGH

Summary

Government sugar price supports are too high, and they should be reduced.

High sugar price supports are:

First, costing American consumers billions of dollars in higher prices, for sugar and sugar-containing products.

Second, aggravating the Budget deficit by costing the Treasury millions of dollars in lost revenue because of the shift from import fees to quotas.

Third, hampering Administration attempts to fight protectionism and liberalize world trade.

And fourth, and perhaps most importantly, pricing sugar out of the sweetener market and thereby reducing the demand for imported sugar to the detriment of the nations of Central America and the rest of Latin America and the Caribbean.

These problems will become accute unless there is a change in United States sugar policy.

The Administration can help the situation by supporting Congressional attempts to change the sugar program.

It can also help immediately by administratively reducing the so-called "market stabilization price" (MSP) for upcoming sugar crops.

Sugar price supports

Sugar price supports are too high, and they are pricing sugar out of the sweetener market.

Sugar prices provide an umbrella under which the corn sweeteners, including high fructose corn syrup, are priced. High sugar price supports are enabling the corn sweeteners to eat into sugar's traditional markets, and as a result, the demand for sugar has dropped at an alarming rate.

Per capita consumption of sugar dropped from 102.3 pounds in 1972 to 75.2 pounds in 1982. During the same period, per capita consumption of corn sweeteners increased from 21.1 pounds to 48.2 pounds (see table I).

Despite the decline in the demand for sugar, high sugar price supports have stimulated increased plantings of sugar beets and sugarcane. USDA's July crop report indicates that a record sugarcane acreage will be harvested.

Sugar beet acreage is also up from 1982, and would be up even higher were producers and processors not engaged in a major fight over dividing the excessive returns the high supports generate.

The financial reports of the large corporate producers who dominate the domestic sugar industry indicate that supports are too high and do not, as they contend, merely provide a safety net to protect them from bankruptcy. The supports guarantee them a profit.

Sugar price supports are far more generous than those for the major crops. For example, supports as a percent of production cost are as follows:

	Percent
Sugar	80
Cotton	72
Corn	65
Wheat	56

Consumers

Sugar price supports place an unfair burden upon consumers and food processors. They result, in effect, in a huge, hidden food tax that costs consumers billions of dollars in higher prices for sugar and sugar-containing products.

It is estimated that supports forced consumers to pay $550 million more for sugar in retail stores in the past year. And that is only the tip of the iceberg. Supports added an estimated $2.5 billion to the cost of sugar-containing products.

The supports are forcing American consumers to pay more for sugar than consumers in practically all of the other nations of the world, including the European Community, which has a reputation for exceptionally high price supports (see table II.)

Budget deficit

Sugar price supports were set so high in the 1981 farm bill that they are totally incompatible with the realities of the world sugar market.

As a result, it proved difficult to "protect" the sugar program (avoid Government acquisition of sugar through CCC loan forfeitures) without shifting to import quotas.

The shift from import fees to quotas cost the Treasury dearly. It is estimated that $194 million in import fee revenue has been lost since the quotas were imposed in May, 1982.

High sugar price supports have also forced the Government to borrow an estimated $732 million to finance the CCC sugar loans. Although these loans do not appear in the Budget, they do put added pressure on financial markets.

World trade

The sugar import quotas that the high sugar price supports have spawned are an embarrassment to the United States, and at the worst possible time. The quotas are hampering our attempts to discourage protectionism and to liberalize world trade, particularly for agricultural products.

The quotas have proved to be a diplomatic and commercial nightmare.

Many nations have filed complaints over the quotas with the International Sugar Organization and GATT. They contend that the quotas violate the spirit, if not the letter, of the International Sugar Agreement.

The imposition of quotas also negated many commercial contracts that were entered into earlier, at considerable loss to the sugar trade. Loopholes in the quotas also permitted Canadians to circumvent the program by concocting sugar mixtures. This problem required the issuance of a Presidential Proclamation.

In addition, the high sugar price supports have contributed, in good part, to the present trade dispute between the United States and the European Community.

High sugar price supports have, as mentioned earlier, stimulated a tremendous increase in the production of high fructose corn syrup. This has, in turn, led to a tremendous increase in the production of corn gluten feed and meal, which are byproducts of the HFCS process.

Most of this corn gluten feed and meal has been shipped to the European Community. Shipments increased from 790,000 tons in 1974 to an estimated 3,800,000 tons in 1983 (see table III).

EC officials contend that imports of corn gluten feed and meal from the United States have displace EC grain sales within the EC. As a result, they have had to ship grain and flour to other nations, and thereby displaced US grain exports.

This problem will intensify unless there is a reduction in sugar price supports.

The sugar quotas also permit other nations, such as Japan, to resist opening markets. The Japanese point to our sugar quotas and contend that we are not sincere in our quest for liberalized agricultural trade.

Central America

High sugar price supports are jeopardizing the Administration's attempts to stabilize the situation in Central America, and the rest of Latin America and the Caribbean. The United States sugar program is detrimental to all of the developing nations that ship sugar to the United States, including those in Central America.

As mentioned earlier, high sugar price supports stimulate the production of corn sweeteners, and thereby reduce the demand for sugar. High supports also maintain domestic sugar production at unrealistic levels. As a result, the major part of the drop in the demand for sugar has been borne by the developing nations.

United States sugar imports dropped from over 5 million tons in 1981 to less than 3 million tons in 1982 (see table IV). Imported sugar, which accounted for 41 percent of US sugar consumption in 1981, dropped to 31 percent in 1982 (see table I).

The imposition of quotas drastically reduced the quantity of sugar that developing nations could ship to the United States. For example, the quotas established for the Central American nations for 1982-83 were considerably smaller than normal shipments from those nations in recent years (see table V).

These nations do receive a premium for the quota sugar they ship to the United States. The premium is, however, temporary and will decline as the world price goes up.

And those nations that ship more sugar to the world market than to the United States suffer because our quotas depress the world price.

The alarming drop in sugar imports will continue unless there is a change in United States sugar policy.

There will be more trouble ahead. Sugar is more politically sensitive than any other commodity in Latin America. It is produced and exported from practically every nation south of our border. And it is a labor intensive crop.

The Latin nations cannot buy from us, if they cannot sell to us. Sugar is among a handful of products they can produce for export. And yet, our sugar policy prohibits them fully exercising their comparative advantage in sugar production.

The Administration is to be commended for promoting the Caribbean Basin Initiative. The benefits of that program are not, however, going to be fully realized because of the quota restrictions of the sugar program.

Policy

It is difficult, if not impossible, to justify the sugar policy of the United States.

The highly inflationary and protectionist sugar program is costing consumers billions of dollars; aggravating the Budget deficit; hampering attempts to liberalize world trade; and jeopardizing attempts to stabilize the situation in Central America.

Ironically, all of this damage is being inflicted in order to protect a small, prosperous group.

The sugar crops play a small role in the nation's agricultural and general economy.

The crops are produced on less than one percent of the nation's farms—sugar beets are produced on less than 12,000 farms, and sugarcane on less than 2,000 farms.

The number of farms producing sugar crops is as follows:

Sugar beets	11,541
Sugarcane:	
Florida	131
Hawaii	480
Louisiana	853
Texas	91

Less than one percent of the nation's crop acreage is planted to the sugar crops. Sugar beets and sugarcane account for less than one percent of total cash receipts from farming.

The Administration can help rectify the inequities that permeate the sugar program (1) by supporting Congressional attempts to change the program, and (2) by changing the manner in which the program is administered, particularly by reducing the so-called "market stabilization price."

PER CAPITA CONSUMPTION OF SWEETENERS

[In pounds]

	Imported sugar	Total sugar	Corn sweetener
1972	46.7	102.3	21.1
1973	45.9	100.8	23.4
1974	49.0	95.6	25.1
1975	34.4	89.1	27.5
1976	39.0	93.4	29.7
1977	41.5	94.2	31.2
1978	41.2	91.5	33.7
1979	41.7	89.3	36.4
1980	32.5	83.7	40.3
1981	32.4	79.5	44.6
1982	23.3	75.2	48.2

Source: USDA.

Average retail sugar price, May 6, 1983

	Dollars per kilogram
Tokyo	1.10
Seoul	1.08
Washington	.97
Stockholm	.82
Rome	.81
Bonn	.79
London	.72
Canberra	.71
Bern	.70
Ottawa	.69
Paris	.69
Pretoria	.58
Madrid	.57
Brasilia	.35
Buenos Aires	.34
Mexico City	.20

Source: USDA.

U.S. PRODUCTION OF HIGH FRUCTOSE CORN SYRUP [1] AND EXPORTS OF CORN GLUTEN FEED AND MEAL

[In thousands of tons]

	HFCS production	Gluten exports
1974 [2]	320	790
1975	540	864
1976	780	1,077
1977	1,050	1,659
1978	1,350	1,798
1979	1,680	2,032
1980	2,190	2,713
1981	2,680	2,961
1982	3,100	3,064
1983 [3]	3,610	3,800
1984 [3]	4,030	4,100

[1] HFCS production based upon consumption.

[2] Gluten numbers are for October/September.

[3] Estimated.

Source: USDA and Schnittker Associates.

U.S. sugar imports

	Short tons, raw value
1978	4,683,000
1979	5,027,000
1980	4,495,000
1981	5,025,000
1982	2,964,000

Source: USDA.

SUGAR EXPORTS TO THE UNITED STATES, 1977–81 AND FISCAL YEAR 1982–83 SUGAR QUOTAS

[Thousands of short tons, raw value]

	1977	1978	1979	1980	1981	1982–83
Belize	36	87	58	72	56	31
Costa Rica	95	78	80	68	82	42
El Salvador	166	130	161	52	46	73
Guatemala	301	156	171	219	224	134
Honduras	21	18	65	89	95	28
Nicaragua	120	108	122	63	80	59
Panama	131	123	157	156	104	81
Total	870	700	814	719	687	448

Source: USDA.

H.R. 3731

To extend temporary suspension of duties on certain clock radios until Sept. 30, 1987.

No comments were received on this bill.

H.R. 3740

To suspend for a 3-year period the duty on 3-(hydroxydiphenyl-acetyl) oxy-1,1-dimethylpiperidinium bromide.

No comments were received on this bill.

H.R. 3741

To suspend for a 3-year period the duty on 5H-dibenz (b,f) azepine-5-propanamine, 10,11-dihydro-N-methyl-, monohydrochloride.

No comments were received on this bill.

H.R. 3742

To suspend for a 3-year period the duty on hydrazone, 3-(4-methylpiperazinyliminomethyl) rifamycin SV.

No comments were received on this bill.

H.R. 3795

To harmonize, reduce, and eliminate barriers to trade in wine on a basis which assures substantially equivalent competitive opportunities for all wine moving in international trade.

See also comments of American Farm Bureau Federation at p.101.

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. Chairman, I appreciate the opportunity to express my support for legislation being considered by your subcommittee, H.R. 3795, the Wine Equity Act of 1983.

As a representative from a wine-producing state, I'm supportive of this bill which has the primary purpose of encouraging the export of U.S. produced wines. Historically, there has been a substantial imbalance in international wine trade resulting from the easy accessibility enjoyed by foreign wines in the American market, which is in direct contrast to the export position of the American industry in virtually every existing or potential foreign wine market.

Unlike the wine industries in many foreign nations, the U.S. wine industry receives no government aid or subsidy. The United States imposes no non-tariff obstacles to the entry, distribution and sale of foreign wines. As a co-sponsor of this vital legislation, let me state that the intent of American wine-producers is not to protect the home market, but only to have their wines admitted into a foreign country on the same fair and equal basis as the wines of those countries admitted to the United States.

While the growth rate of the U.S. wine industry has slowed significantly in recent years, the sales of low-cost table wines imported from Europe are booming. Close to one-third of the growth of the wine market during the past decade has been filled by imported wines, which now has 26.5% of the market.

The current system is unjust. Despite the fact that American-produced wines are achieving worldwide recognition among wine experts, every time an American winegrower seeks to market his or her product abroad, they are faced with complex, restrictive, and prohibitive tariff and non-tariff barriers. Let me cite the following example. In 1982, foreign wines with a value of $781 million were imported into the United States, while the value of U.S. wine exports amounted to only $38 million, resulting in a trade deficit of wine alone of $743 million or 2.1% of the entire U.S.

trade deficit. Further, while U.S. residents consumed 122.1 million gallons of imported wine in 1982, U.S. winegrowers sold merely 9.1 million gallons of wine to foreign markets. Almost half of that amount went to Canada.

Earlier this year, a Department of Agriculture investigation found that the European wine industry has been so aided by tariff and non-tariff barriers, that it is able to flood the American market to the detriment of unsubsidized American competition. "The European Community's wine industry benefits from an array of production and financial incentives," the USDA report stated. "These aids, which are unavailable to the U.S. wine industry, have stimulated the production of ordinary table wine, insulated producers against recurrent surpluses, and have ultimately enhanced the European Community's ability to achieve an expanding share of the U.S. wine market."

The Wine Equity Act provides the President with the authority to negotiate the reduction and elimination of tariff and non-tariff barriers so as to provided United States produced wines fair and equal access to foreign markets. Under this legislation, the President is authorized, if he finds a country refuses to reduce or eliminate its barriers to U.S. wine, to impose on wines imported into the United States from the country the same tariff and non-tariff restrictions that are applied by that country to U.S. wines when imported into that country.

I believe this legislation is needed to direct the attention of the government to the problems of one of the small, but important sectors of our economy. If the wine industry were to await another multi-lateral round of trade negotiations or the enactment of reciprocitytype legislation, it is believed that, once again, wine would receive a low priority and would have to take a "back seat" to the problems of our Nation's "smokestack" industries. The wine industry does not have similar problems. As a matter of fact, wine growers use some of the most modern and efficient equipment in the world. If given fair market conditions, such as equal tariffs, nontariff barriers and the elimination of subsidies, the U.S. industry undoubtedly will prove itself as more competitive than other wine producing nations.

The U.S. wine industry is dependent on the consumer and continually strives to improve its product without an increase in price. It is not looking for protection of its home market, but is only concerned about achieving the opportunity to export its product world-wide and has no desire to restrict availability of imports in the American market-place. I therefore, strongly urge my distinguished colleagues to support this vital legislation.

STATEMENT OF REX D. DAVIS, PRESIDENT, NATIONAL ASSOCIATION OF BEVERAGE IMPORTERS

POSITION ON H.R. 3795, WINE EQUITY ACT

I am Rex D. Davis, President of the National Association of Beverage Importers, hereafter NABI. My office address is 1025 Vermont Avenue, N.W., Washington, DC. NABI is the national trade association representing importers of wine, spirits and beer. Its membership comprises over 100 importing companies.

My remarks on behalf of the members of NABI are directed to H.R. 3795, the Wine Equity Act. NABI is firmly committed to the principle of free trade and actively works toward the elimination or prevention of barriers to international commerce. Thus, we endorse the principle behind the Wine Equity Act, but have serious reservations concerning the sectoral reciprocity which is the framework of the proposed legislation.

Enactment of H.R. 3795 would establish a dangerous precedent for the United States Congress and could result in a large number of petitions for special treatment by other industries. We find it significant that this view is shared by the Office of the United States Trade Representative. In a letter dated October 13, 1983, addressed to Chairman Sam Gibbons of this Subcommittee, U.S. Trade Representative Ambassador William E. Brock stated:

"The Administration has consistently opposed legislation mandating bilateral or sectoral reciprocity such as that envisaged by this bill. If the principle of sectoral reciprocity were to become a guiding principle in international trade and trading nations aimed at balancing benefits on a sectoral basis, we believe the result would be to restrict trade, rather than expand it, particularly if importing countries adopted differential treatment depending on the source of imports."

In a July 12 "Dear Colleague" letter by the principal sponsors of this legislation, the attention of other members of Congress was directed to the imbalance in the U.S. wine trade:

"In 1982, foreign wines with a value of $781 million were imported into the U.S. while the value of U.S. wine exports amounted to only $38 million. This resulted in a trade deficit for wine alone of $743 million—2.1% of the entire trade deficit."

NABI shares the concern over an unfavorable U.S. trade balance, but the problem of trade deficits must be approached on a country-by-country basis rather than on a commodity-by-commodity basis. Isolation of the wine trade deficit ignores the larger and controlling consideration of overall merchandise trade balances. The $743 million wine trade deficit which the U.S. encountered in 1982 becomes insignificant when viewed in the perspective of the total merchandise trade picture with countries which are the principal exporters of wine to the United States. Statistics show that in 1982, 57.6% of all wines imported into the United States came from Italy and 16.7% came from France. This means that almost 75% of wine imports into the United States came from these two countries.

France and Italy are among the United States most valued trading partners. Last year, in terms of merchandise trade, France purchased $1.565 billion more than it sold to the U.S. Similarly, Italy purchased $685 million more than it sold to the U.S. Adding just these two countries together, there is a balance of trade in favor of the U.S. of over $2.2 billion. It should be obvious that tampering with such a favorable trade balance by way of a sectoral approach to wine trade would further jeopardize our already-precarious trade balance. Sectoral reciprocity among nations often sets in motion forces of retaliation, and it is possible that reducing a $783 million trade deficit in the wine sector could also erode a favorable trade balance of over $2 billion in the overall merchandise category with the two largest wine-exporting countries.

The sectoral reciprocity of the Wine Equity Act would go well beyond country-by-country retaliation. Sec. 3(1) of the bill defines the term "designated major trading country" to include "a group of countries represented as an economic union." For the application of sectoral reciprocity, this definition paves the way for dealing with the entire European Economic Community as one entity. The status of the trade balance between the U.S. and the EEC become much more important than the trade balances between the U.S. and France, or between the U.S. and Italy. In 1982 for instance, U.S. merchandise trade with the entire European Economic Community produced a favorable balance of trade for the U.S. of $5.4 billion.

Sec. 4(b) of the Act sets forth the basic mechanism for sectoral retaliation:

"If a country does not provide harmonization to United States-produced wine within one hundred and eighty days after the country's designation as a designated major trading country to the tariff and nontariff barriers the President shall impose on wine imported from that country tariff and nontariff barriers equal or substantially equivalent to the tariff and nontariff barriers applied by that country to United States wine."

Even if a country could provide satisfactory harmonization under the foregoing section, it could not be accomplished within one hundred and eighty days! It takes at least this much time to arrange for negotiations. The Congress has recognized the need for adequate time to conduct negotiations in its various trade laws, and has allowed a minimum of five years for negotiations.

Another weakness in the Wine Equity Act is its ineffectiveness in gaining access for U.S. wines in markets of non-wine-producing countries. The Act attempts to address this problem with the following language:

"The President shall also direct the United States Trade Representative to conduct negotiations with designated major trading countries which do not export wine to the United States so as to seek elimination of all tariff and nontariff barriers of such countries to the importation of the United States wine."

It is obvious, however, that the limited sectoral approach will have little effect in achieving reciprocity in such non-wine/producing countries as Canada, Japan and Venezuela which are frequently cited as denying access to U.S. wines. Broader negotiating authority is required to obtain market access in these and other non-wine-producing countries.

A further undesirable aspect of the Wine Equity Act is its predictable political impact on the ongoing wine negotiations between the Commission of the European Communities and the United States. On July 26, 1983, less than two weeks before the introduction of the Wine Equity Act, a Wine Accord was entered into between the EEC and the United States. The accord contained agreements in the wine sector and pledged continuing negotiations to eliminate trade barriers. We understand that U.S. representatives are in Brussels this week to coordinate administrative actions with EEC officials in implementation of the Wine Accord. The enactment of sectoral reciprocity legislation will certainly jeopardize progress in the elimination of trade barriers in the wine area.

The administration's position in support of free trade and in opposition to sectoral reciprocity is set forth by the Subcommittee on International Economic Policy and Trade:

"Fair and equitable market opportunities for U.S. exporters, investors, and service industries has been and will continue to be a goal of this Administration. We must continue to do this within the context of our overall policy and our international obligations. This does not mean that the trading system is perfect, or that we should never question or seek to improve any provisions of our international obligations. *However, we must avoid a distorted use of reciprocity that could undermine an already vulnerable multilateral trading system,* trigger retaliation abroad, and further deprive the United States of export opportunities and erode, if not eliminate, our role as the world leader in liberalizing international trade." (Italic supplied.)

We submit that the Wine Equity Act is exactly the type of "distorted use of reciprocity" criticized by the United States Trade Representative in the above testimony. NABI has consistently supported the extension of the President's trade authority under Section 124 of the Trade Act of 1974. The absence of such authority is among the Congressional findings of the Wine Equity Act in Section 2(a)(5) where it is stated: "The authority of the President under the Trade Act of 1974 to negotiate reductions in trade barriers has expired." We have made our position known to the House Ways and Means Committee in support of H.R. 4761 which would have extended the President's negotiating authority for two years. The California Association of Wine Grape Growers has also supported H.R. 4761 for the specific purpose that:

The use of extended authority for negotiations of barriers to the export of U.S. alcoholic beverages be given the highest priority. Although there are many possible uses for the extended authority, only one use is mandated by Section 854 of the Trade Agreements Act of 1979.

Rather than addressing the fundamental problem of providing the President with authority to negotiate the elimination of trade barriers on a multilateral basis, the Wine Equity Act would take a provincial approach in correcting the trade disparity in wine.

On September 27, 1983 the House Ways and Means Committee adopted the multilateral negotiating approach to trade reciprocity by favorably reporting out the Reciprocal Trade and Investment Act of 1983. The Committee inserted an amendment to the bill at Sec. 7 which would provide limited negotiating authority for the President to enter into trade agreements with foreign countries. In explanation, page 19 of the House Report states:

"At the present time, the President does not have authority to enter into trade agreements providing for modifications in U.S. rates of duty. Limited residual tariff authority under section 124 of the Trade Act of 1974 expired on January 3, 1982. The Committee believes that provision of tariff authority is necessary to enable the President to obtain reductions in foreign tariff or nontariff barriers which restrict U.S. exports and to reduce disparities resulting from foreign tariffs higher than U.S. tariffs on the same product. *This authority would also be an appropriate tool to carry out negotiations mandated under section 854(c) of the Trade Agreements Act of 1979 to obtain reduction or elimination of foreign barriers to U.S. exports of wine and other alcoholic beverages."*

NABI submits that granting negotiating authority to the President represents a proper answer to the problems of tariff and nontariff barriers affecting wine. In short, it would open up the door to multilateral negotiations and avoid the pitfalls of the sectoral approach.

STATEMENT OF JAMES TREZISE, PRESIDENT, NEW YORK WINE COUNCIL, INC.; ALSO ON BEHALF OF NEW YORK STATE WINE GRAPE GROWERS, INC., AND NEW YORK ASSOCIATION OF WINE PRODUCERS

The New York Wine Council, Inc. was formed on June 1, 1983 as a nonprofit corporation to serve as an umbrella organization for the New York State Wine Grape Growers, Inc. and the New York Association of Wine Producers. Total membership includes 252 winegrape growers, 36 wine producers, and 103 others with a business or personal interest in New York State's grape and wine industry.

Grape growers and wine producers affiliated with the Wine Council employ approximately 4,000 people; generate annual gross sales of about $200,000,000; and pay Federal and State excise taxes exceeding $20,000,000. The wine producers affiliated with the Wine Council account for more than 90 percent of the grapes purchased and wine produced in New York State.

New York's grape growers and wine producers are more adversely affected by unfair international trade practices than their counterparts in any other state. New York is the nation's second largest wine-consuming state in terms of total volume, and thus a prime target for both European and California producers. The result is an intense market squeeze for New York's vintners, particularly since foreign protectionism virtually precludes the export of California wines.

New York's grape industry has entered a financial crisis. According to a study conducted by the New York State Wine Grape Growers, Inc., the typical grower earned a net income of $192.00—or 9 cents per hour—in 1981. The situation has deteriorated even further since then, especially in 1983 when grape prices declined while production costs continued increasing. It is reasonable to expect that one out of seven grape growers in New York State will go out of business in the next 12 to 18 months unless the market situation improves.

New York's wine producers have been adversely affected as well. The U.S. market share of New York-produced wines has been severely eroded by the tremendous influx of foreign wines, most of which come into New York harbor. About 55 percent of all wine consumed in the metropolitan New York City area is imported—a higher percentage than any other city in the U.S.

Consistent with our nation's overall economic philosophy, the United States imposes fewer trade barriers on wine than almost any other nation. However, American-produced wines are essentially embargoed by most other nations through a variety of protectionist measures from unreasonable tariffs to quantitative restrictions and reference price systems. The result is a one-way street in the international wine trade, with New York being the ultimate destination.

Grape and wine production in the United States is technologically sophisticated, economically efficient, and of world-class status in terms of wine quality and value. The wines being made from coast to coast are products of which America can and should be proud, and which could attract an international market if given the opportunity. Today, that opportunity is precluded by a complex maze of tariff and nontariff barriers in the international wine trade.

In 1982, the U.S. incurred a net wine trade deficit of $743,000,000. In terms of dollar value, the wine import-export ratio was about 20-to-1 overall, and far more than 100-to-1 with the European Economic Community—which accounts for nearly all U.S. imports.

The Wine Equity Act of 1983 seeks to harmonize, reduce and eliminate trade barriers in the international wine market. This would provide American wine producers the opportunity to compete on a more equitable basis, and to penetrate new international markets.

Its immediate importance for New York vintners would be in helping to relieve the intense market squeeze by European and California producers, by giving the latter an expanded market base. Over time, it is likely that New York vintners would engage in the export trade as well.

The philosophical principle underlying The Wine Equity Act is that of free and fair trade. The practical implications are that it will give American producers new markets and a more equitable competitive environment; and that it will help correct the enormous and artificially created U.S. wine trade deficit.

For both philosophical and practical reasons, the New York Wine Council strongly supports The Wine Equity Act, and urges prompt and favorable consideration by the Congress.

H.R. 3817

To apply for a 5-year period a lower rate of duty on ethyl and methyl parathion.
No comments were received on this bill.

H.R. 4035

To suspend temporarily the duty on a certain chemical intermediate.
No comments were received on this bill.

H.R. 4218

To extend duty-free treatment to Meta-toluic acid (MTA).
No comments were received on this bill.

H.R. 4223

To suspend for a 3-year period the duty on 4–0-beta-D-Galactopyranosyl-D-fructose.
No comments were received on this bill.

H.R. 4224

To suspend for a 3-year period the duty on nicotine resin complex.
No comments were received on this bill.

H.R. 4225

To suspend for a 3-year period the duty on an iron dextran complex.
No comments were received on this bill.

H.R. 4232

To amend the Tariff Schedules of the United States to clarify the classification of any naphtha described as both a petroleum product and a benzenoid chemical.

STATEMENT OF LARRY D. LINDLEY, BEAUMONT OIL, INC.

Mr. Chairman, members of the subcommittee, I am Larry D. Lindley, General Manager of Feedstock Trading for Beaumont Oil, Inc. (Beaumont Oil). Beaumont Oil is a small and independent gasoline producer that manufactures gasoline by upgrading lower value hydrocarbon mixtures with higher octane blendstocks such as catalytic naphtha, platformate or reformate and pyrolysis gasoline. Beaumont Oil supports the enactment of H.R. 4232, introduced by Congressman Jack Brooks, which will amend the Tariff Schedules of the United States to eliminate a technical problem. This will provide domestic gasoline producers with access to these vital blendstocks from foreign sources.

Classification of gasoline blendstocks as benzenoids

Currently, the United States Custom Service (Customs) classifies certain imported hydrocarbon mixtures, commonly utilized as gasoline blendstocks by the domestic petroleum industry, as benzenoid compounds, rather than as petroleum products. The foreign petroleum products used most frequently in the production of gasoline that are now often classified by Customs as benzenoid compounds are (1) catalytic naphtha, (2) platformate or reformate, and (3) pyrolysis gasoline. These blendstocks are produced generally by cracking or reforming refining processes, which also results in the formation of benzenoid chemicals. Because of this benzenoid chemical contents, Customs attempts to classify these blendstocks as benzenoid compounds, whereas otherwise the blendstocks would be classified by Customs either as motor gasoline or, if the products do not satisfy the specifications for gasoline, as naphtha.

Duty Levels Vary Widely Depending on Classification

Motor gasoline is subject to a Customs duty of \$.0215 per gallon or \$.525 per barrel, while naphtha is subject to a duty of \$.0025 per gallon or \$.105 per barrel. Benzenoid compounds are subject to a much higher duty of 17.3 percent *ad valorem* plus \$.011 per pound. Thus, the duty as benzenoid compounds will be approximately \$.22 per gallon, or in the range of \$8.00 to \$9.00 per barrel.

Congressionally Mandated De Minimis Benzenoid Threshold

Headnote 1 to Schedule 4, Part 10 of the Tariff Schedules of the United States Annotated (TSUSA), 19 U.S.C. § 1202 (Headnote 1), which covers "Petroleum, Natural Gas, and Products Derived Therefrom," states that Part 10 does not apply to any "fuel oils, motor fuel, and lubricating oils and greases, containing by weight more than 25 percent of any product" described in Schedule 4, Part 1 of the TSUSA relating to "Benzenoid Products and Chemicals." Thus, Congress appears to have adopted in the TSUSA a de minimis threshold of 25 percent of any single synthetic or naturally occurring benzenoid product that must be exceeded in order for a mixture of hydrocarbons that otherwise meets the specifications for a fuel oil, motor fuel or lubricating oil or grease to be properly classifiable by Customs as a benzenoid product. Catalytic naphtha, reformate and pyrolysis gasoline almost invariably would not exceed the *de minimis* level of 25 percent of any single benzenoid product.

Inconsistent Administrative De Minimis Level for Synthetic Benzenoids

While a petroleum product meeting Customs specifications for motor gasoline is classified as such regardless of the level of any single benzenoid product, Customs nevertheless routinely classifies gasoline components, such as catalytic naphtha, reformate and pyrolysis gasoline that do not meet motor gasoline specifications, as benzenoid products by the application of a de minimis threshold of 2½ to 5 percent by weight for all (rather than any single) dutiable benzenoid products. Although Headnote 1 appears to apply the de minimis threshold of 25 percent only to motor fuel, fuel oils and certain other products, a 2½ to 5 percent de minimis threshold for synthetic benzenoids has been adopted administratively by Customs, which is at variance with the 25 percent level indicated by Congress. Indeed, as a Customs official has informally opined, it appears that Congress expressly applied the 25 percent de minimis level only to fuel oils, motor fuel, and lubricating oils and greases because these were the only products that may have contained dutiable benzenoids when these provisions of the TSUSA were enacted many years ago due to the absence of offshore petroleum cracking and reforming capacity at that time.

Unsuitability of Gasoline Blendstocks for Use as Benzenoids

Additionally, this 2½ to 5 percent de minimis threshold is inappropriate because the benzenoid chemicals contained in these blendstocks can be commercially utilized only in the production of gasoline. The synthetic benzenoid products contained in gasoline components are neither integral to the character of these components nor sought by a domestic gasoline producer in the acquisition of these components, but are only by-products by petroleum reforming or cracking that cannot be economically extracted for any of the possible higher value chemical uses.

Classification of certain foreign blendstocks as benzenoid chemicals effectively prevents the importation of these vital gasoline components thereby precluding the domestic refining industry from producing a optimal product slate. This, in turn, reduces the gross national product, since the reduced value of domestic petroleum product output is not offset by any corresponding increase in receipts to the United States Treasury. Indeed, since there are no imports of these products at these high tariff rates, the enactment of H.R. 4232 will not have any adverse Federal revenue impacts. To the contrary, the enactment of H.R. 4232 will increase the duty receipts because it will permit the importation and payment of duties of gasoline blendstocks that currently cannot be imported due to their classification as benzenoid chemicals.

Beaumont Oil appreciates the Subcommittee's attention to this pressing problem afflicting domestic gasoline producers that would be remedied by the enactment of H.R. 4232. Thank you for the opportunity to provide testimony in support of this legislation.

STATEMENT OF C. SCOTT KIRK, THE LOUISIANA LAND & EXPLORATION CO.

Mr. Chairman, Members of the Subcommittee; I am C. Scott Kirk, Liquids Marketing Representative of The Louisiana Land and Exploration Company (LL&E). LL&E supports the enactment of H.R. 4232 introduced by Congressman Jack Brooks to remedy a technical classification problem that now pragmatically precludes the importation of vital gasoline blending components containing certain benzenoid chemicals.

The high duty levels resulting from the United States Customs Service (Customs) classification of important gasoline components as benzenoid products now effectively precludes the importation of products necessary for upgrading the nation's refinery output. Identical high octane gasoline components that are produced domestically generally are not available. Thus, these vital gasoline components must be obtained by domestic small and independent gasoline producers from foreign sources. When the duties make these components prohibitive to import, the foreign souces simply export finished product to the U.S., which is detrimental to our balance of payments.

If Customs did not classify the imported gasoline blendstocks as benzenoid products, they would be classified by Customs as either naphtha or motor gasoline depending on whether they satisfy the specifications for gasoline contained in ASTM-D439. In general, products of this type that do not satisfy the specifications for gasoline are classified by Customs as naphtha.

Motor gasoline is subject to a Customs duty of $0.125 per gallon or $.525 per barrel, while naphtha is subject to a duty of $.0025 per gallon or $.105 per barrel. Benzenoid compounds are subject to a much higher duty of 17.3 percent ad valorem plus $.011 per pound. Thus, the duty will increase to approximately $.22 per gallon, or in the range of $8.00 to $9.00 per barrel, as a result of the application of the high benzenoid chemical duty. Based on the similar use of these imported blendstocks, however, the naphthas containing benzenoid chemicals should be subject only to the duty payable on imported naphtha that does not contain benzenoid chemicals.

In the absence of corrective legislation such as H.R. 4232, the increase in the duties payable to Customs due to the classification of certain gasoline blendstocks as benzenoid products will continue to prohibit the importation of these imported petroleum products. As a result, U.S. refineries, especially those configured to process more plentiful, low quality crude oil that is less costly to our nation, are unable to obtain those gasoline components needed to optimize their product slates. Replacement volumes are not available domestically because U.S. refiners generally utilize their own output of these products internally. Thus, domestic refiners are precluded from optimizing the value of their product output, which in turn reduces their potential contribution to the gross national product.

Ironically, finished gasoline can thus be imported at a lower cost than the component ingredients. Thus, the classification of these foreign source gasoline components as benzenoids inevitably results in the importation of greater volumes of finished gasoline at a higher price. The importation of gasoline priced higher than gasoline components not only exacerbates the nation's balance of payments deficit, but also will deprive the United States of the value added, tax and employment benefits attributable to the domestic, rather than foreign, production of gasoline without any offsetting benefits.

In conclusion, therefore, we respectfully request that the importation of certain gasoline blendstocks containing benzenoid chemicals be permitted by the enactment of H.R. 4232. LL&E appreciates this opportunity to present its views in support of H.R. 4232.

H.R. 4255

Providing for a reduction in the duty on certain fresh asparagus.
See also comments of American Farm Bureau Federation at p. 101.

STATEMENT OF HON. BILL FRENZEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman, I would like to submit testimony in favor of my bill, H.R. 4255, reducing the duty in the off season on fresh asparagus imports. Realizing the sensitivity of the domestic asparagus growers to this kind of legislation, it was my intent to draft it as narrowly as possible. The bill reduces the current 25% ad valorem duty on fresh asparagus to 5% only during the September 15-November 15 period when there is no domestic production of fresh asparagus. To further narrow the bill, we have prohibited the 5% ad valorem duty for the off season from being applied to any asparagus other than that air freighted into this country. This would keep the price high and not encourage any importer to establish domestic consumer preference on imports of fresh asparagus at any tariff.

I understand that there is little, if any, processing capability for asparagus in this country. However, if any is contemplated, my bill also serves to discourage huge import volumes during the off season for use in processing, since the costly air freight stipulation would act as a deterrent.

The intent of the bill is only to provide consumers with asparagus in the off season. It does not intend to take away any market served by the domestic growers, nor do I believe that it will at any point accomplish that.

STATEMENT OF WILLIAM P. DEPAOLI, GENERAL MANAGER, CALIFORNIA ASPARAGUS GROWERS' ASSOCIATION

My name is William P. DePaoli and I am the General Manager of the California Asparagus Growers' Association, 1850 West Charter Way, Post Office Box 1762, Stockton, California, 95201.

The Association is strongly opposed to the passage of H.R. 4255 relating to the tariff rate of fresh asparagus shipped by air during the September 15 through November 15 period, for a number of reasons, including the extremely detrimental effect it would have on the domestic asparagus industry.

Many years ago the production of asparagus began to decline due to foreign competition. On the other hand, foreign production has steadily increased. Our foreign competitors enjoy cheap labor costs and since the cultivation of asparagus is labor intensive, they are virtually driving the domestic producers to terminate asparagus production, thereby resulting in losses of domestic employment.

The present tariff rates to some extent, albeit small, offset the meager labor costs of the foreign producers. The Association's position is that the present rates, however, do not provide adequate protection and in fact should be increased.

We understand that it has been erroneously said that the reduced duty period of September 15 to November 15 would be at a time when domestic producers are not marketing fresh asparagus. To the contrary, growers in the Sacramento-San Joaquin Delta and the Imperial Valley areas of California produce, harvest, and sell asparagus during the September 15 through November 15 period. In fact, the very reason for production and marketing by the Delta growers during the subject period is in an attempt to alleviate the problem of Spring oversupply resulting from increased Spring imports from foreign producers. During the 1984 season it is the intention of Delta growers to increase the Fall production and marketing of asparagus.

Thus, it is simply untrue that a reduction in duty during Fall has no impact on domestic producers. Reducing the Fall duty will, in effect, deprive domestic producers of any opportunity to alleviate or mitigate the damaging effect of Spring imports.

It has also been said that since the proposed tariff on fresh asparagus would apply only for costly air shipments, the amount of asparagus imported in such manner would somehow be insubstantial. That is a proposition unsupportable by fact. First of all it should be recognized that it would be foolhardy to even attempt to ship fresh asparagus from any foreign producer, other than perhaps Mexico, to the United States by any method other than air since asparagus decays very rapidly. In fact, even domestic producers use air shipping. Thus, the limitation of the proposed tariff to shipments by air is in reality no limitation at all. In fact, we can safely predict that in order to take full advantage of the proposed tariff revision, virtually all asparagus from foreign producers other than Mexico will be shipped in large lots to reduce air shipping costs. Moreover, it would behoove even Mexican producers to take advantage of short distance air shipping costs to obtain the duty savings while at the same time they can increase the length of time to market the product before it decays. We understand that Mexican imports will be increasing next year by about 50% over 1983 imports, thus exacerbating the problems of domestic growers. We can only surmise that the ultimate design of the instant bill will be to guarantee the final demise of domestic asparagus production.

It should further be noted that the instant bill is clearly a special interest measure which can and will lead to further special requests for reduction in duties, both on asparagus and other items as well. The thirst of foreign producers for reduction in duties, and their concomitant increase in profits, will not be quenched by the proposed reduction. In fact, passage of the instant bill will encourage further requests. In a sense, passage of the instant bill would be tantamount to opening "Pandora's Box". Furthermore, passage of the instant bill would reduce federal revenues which are already inadequate. At the same time the subject bill would contribute to an increase in federal expenditures since the bill would make it necessary for federal employees to determine whether a particular shipment is qualified for entry at the reduced duty rate.

Finally, and perhaps most importantly, some consideration should be given to the employees in the domestic asparagus industry who bear the loss of jobs when domestic producers are driven to the cultivation of other crops. Since the cultivation of asparagus is labor intensive, most other crops do not require anywhere near as many employees. In addition, the cultivation of asparagus provides work during periods of the year when other agricultural employment is simply unavailable.

In conclusion, the California Asparagus Growers' Association is strongly opposed to the bill and respectfully requests that the above be given careful consideration. In the event the committee desires any information that the Association might have or desires a response to any specific questions, I will be happy to respond to the best of my ability.

Thank you.

STATEMENT OF WILLIAM G. PHILLIPS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL MULTIFOODS CORP.

Mr. Chairman and members of the Subcommittee on Trade, we appreciate this opportunity to strongly urge your favorable consideration, of H.R. 4255.

Upon enactment of this bill the present duty of 25 percent of the ad valorem value of fresh asparagus imported by air would be reduced to 5 percent during the 60 day period from September 15 to November 15.

The effect of the bill would be to reduce the cost of fresh asparagus to United States consumers. In our opinion, the affect on our domestic asparagus producers would be negligible.

International Multifoods Trading Operations are one of several businesses that seek to meet the consumers demand for fresh asparagus during the time when fresh domestic asparagus is virtually unavailable.

During the period of time in question—September 15 to November 15—only approximately two percent (or roughly 1.5 million pounds) of the total annual domestic supply of fresh asparagus is available to our consumers, according to the Supply Guide of the United Fresh Fruit and Vegetable Association.

According to Commerce Department data, from September 15th to November 15th, 1982, less than 134,000 pounds of fresh asparagus was imported from six countries other than Canada and Mexico, these latter two relying on lower cost ground transportation. During that period in 1982, Multifoods imported by air approximately 25,000 pounds of fresh asparagus from Chile.

In our judgment, we came nowhere near satisfying the consumer demand for fresh asparagus in 1982. And this year, due to adverse weather in Chile which substantially reduced supplies, we were even less able to keep up with demand.

Because we ship our product by air, to guarantee the highest quality fresh asparagus to consumers, our costs are high. So high in fact, that even if we were entering the product duty free, the price to consumers would be well above that of domestic asparagus. Our principal concern is that the already unavoidably high price of our product to the consumer is being unduly further increased by the current 25 percent duty.

In circumstances such as those addressed by H.R. 4255, where there is essentially no competition with domestic producers, we believe narrowly defined relief from our unusually high duty is warranted for 60 days each year.

Adjusting the rates of duty on fresh asparagus shipped by air during the 60 days in question will insure that consumer demand for high quality fresh asparagus is met at the lowest possible cost.

Reducing the cost to consumers of imported fresh vegetables during periods of limited domestic availability is not without precedent.

Rates of duty under the United States tariff schedule vary significantly depending on the date of entry for at least seven vegetables including: tomatos; cauliflower; cucumbers; lettuce; celery; eggplant; and lima beans.

Similarly, fresh asparagus enters Canada duty free, except during the approximately eight weeks when the domestic crop is available. We became acutely aware of the disparity between our tariff schedule and that of our Northern neighbors this year, when we saw a significant amount of the limited Chilean crop diverted to Canadian importers.

In conclusion, we ask your support for H.R. 4255 as a means of reducing the cost to consumers of a product—air freighted fresh asparagus—during the limited time that demand exceeds domestic availability.

Thank you for your consideration.

H.R. 4296

To amend the Tariff Schedules of the United States to establish equal and equitable classification and duty rates for certain imported citrus products.

See American Farm Bureau Federation comments at p. 101.

H.R. 4316

To amend the Tariff Act of 1930 regarding same condition drawbacks and same kind and quality drawbacks, and for other purposes.

STATEMENT OF HOWARD J. HENKE, EXECUTIVE DIRECTOR, NATIONAL COMMITTEE ON INTERNATIONAL TRADE DOCUMENTATION

The National Committee on International Trade Documentation (NCITD) is a non-profit, privately financed, membership organization consisting of over 250 member companies dedicated to simplifying and improving international trade documentation and related practices and procedures. The membership includes manufacturers, exporters, importers, carriers of all modes, banks, insurance companies, freight forwarders and customhouse brokers, trade associations, port authorities and others.

NCITD's technical committees include one dealing with duty drawback. That committee maintains regular liaison with the U.S. Customs Service and in concert with the Service attempts to resolve issues of significance. One such issue which has been addressed by Customs and the NCITD Drawback Committee has been determined to require a legislative solution and is now treated by H.R. 4316. This bill seeks to amend the Tariff Act of 1930 by permitting the privilege of substitution under the provisions of same condition drawback.

The background of the subject is as follows: Section 313 (j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) provides in part:

"(j) Same condition drawback—(1) If imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

"(A) is, before the close of the three-year period beginning on the date of importation—

"(i) exported in the same condition as when imported, or—then upon such exportation . . . 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback."

SIMILARITY BETWEEN 313(A) AND 313(J)

Section 313(j) is similar to section 313(a) in that imported merchandise must be exported, 313(j) drawback being applicable to export of the imported merchandise in its same condition and 313(j) drawback being applicable to export of the imported merchandise in an article resulting from a process of manufacture.

In either case an importation and subsequent exportation of the imported merchandise takes place, subject further to the requirements of other drawback regulations.

SECTION 313(A) NOT APPLICABLE TO ALL MANUFACTURING SITUATIONS

Experience showed that section 313(a) imposed a burden on otherwise legitimate drawback claimants in those situations where both duty-paid and non-duty paid or domestic merchandise stocks (of the same kind and quality) were maintained. If the merchandise from both sources was commingled, or unless proof could be furnished that imported merchandise was actually used in the manufacture of the resulting exported article, drawback was denied and honest drawback claims had to be given up.

SECTION 313(B)—MANUFACTURING DRAWBACK SUBSTITUTION

A legislative remedy, first applicable to specified commodities and later made applicable to all commodities, was provided by section 313(b), Tariff Act, 1930. It provides for the use of duty-free or domestic merchandise in the manufacture of articles for exportation, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported article.

In the interest of efficiency, manufacturing firms frequently find it advantageous to commingle imported and domestic merchandise of the same kind and quality (which is to say fungible) while in storage. Having been commingled, such merchandise would lose its identity as to origin.

The merchandise in those stores is drawn upon for use in production without regard to its origin. Such merchandise is eligible for drawback under the aforementioned section 313(b) even though the article being exported may contain domestic merchandise upon which the drawback is being claimed.

MANUFACTURING ALSO EXPORT IN THE SAME CONDITION

Efficiency also requires that the same storage location be drawn upon for merchandise to be exported in its same condition. Such merchandise would generally be exported to supply other manufacturing operations or to provide field spare parts. In such cases it would have come into the United States initially for one or more of the following reasons:

1. Landed cost reductions applicable to consolidated orders placed on foreign vendors. Those reductions would be related to lower unit costs of production, transportation and packaging (for containerized shipments).
2. Consolidation of quality control work to insure product aherence to high performance standards (particularly important to high technology companies).
3. Reduction of field support costs resulting from centralized warehousing and distribution. Inventory and transportation costs are favorably reduced as well.

The sum of these conditions is to insure high quality support at the most favorable price, thereby putting United States exports in the best possible competitive position on world markets.

Merchandise withdrawn from commingled common store containing both foreign merchandise and domestic merchandise is deemed by Customs as not eligible for same condition drawback under section 1313(j) because, it is reasoned, the merchandise actually being exported might not be duty paid merchandise.

BOTH THE UNITED STATES AND ITS EXPORTERS BENEFIT

United States commercial activities related to import/export operations, as well as the United States itself, benefit from the importation of merchandise which may be exported in its same condition. Those same benefits accrue even though the export may be domestic merchandise which has been used in lieu of the imported merchandise. The benefits are the same ones detailed in testimony by NCITD representatives before the Subcommittee on Trade of the House of Representatives, Committee on Ways and Means in support of H.R. 5464 on March 17, 1980 (later made a part of H.R. 5047, the legislation which amended section 313 of the Tariff Act of 1930).

They are as follows:

1. It will lead to an increase in operations to be done in the United States on goods which are imported and will be re-exported.
2. It will increase the profitability of exporting surplus inventory or goods needed to complete a foreign order.
3. The bill is likely to lead to increased U.S. employment.
4. The bill is likely to improve the balance of payments posture through increased exports.

IMPRACTICAL OPERATIONS REQUIRED BY SECTION 313(J)

In order to insure a supply of imported, duty paid, merchandise eligible for same condition drawback under Section 1313(j), it would be necessary to maintain a separate, and exclusively foreign originated, stock upon which to draw in order to avoid the fatal taint of domestic or duty free merchandise.

If an exporter elects to utilize the wasteful practice of separate stores, he can receive the drawback for imported merchandise exported in its same condition to which the law entitles him. Without the wasteful practice of duplicate stores he is denied that drawback.

LEGISLATIVE SOLUTION—ALLOW USE OF DOMESTIC MERCHANDISE IN LIEU OF DESIGNATED IMPORTED MERCHANDISE FOR NON-MANUFACTURING DRAWBACK

Just as substitution of domestic for imported merchandise in manufacturing operations has won the approval of the Congress and the Customs Service, it seems equally reasonable to allow the same opportunity for same condition drawback claimants. The revenue of the United States would not be further diminished than would be the case if claimants went to the unproductive and non-competitive practice of maintaining separate stores of foreign merchandise and domestic merchandise. It is appropriate to treat both kinds of drawback the same since the advantages to the United States and its exporters who compete in foreign markets are the same in each case.

Legislation to permit the use of domestic or duty free merchandise in lieu of the designated imported merchandise against which drawback for non-manufactured exports is claimed will remove this restraint against United States exports.

UNDESIRABLE FEATURE IN H.R. 4316, AS INTRODUCED

As can be seen from the foregoing exposition, there are substantial and valid reasons for authorizing the privilege of substitution under the provisions of same condition drawback. However, in order that such a procedure be effective in the international trade of the United States, it is essential that the privilege of substitution under same condition drawback be available to all bona fide importers and exporters who are active in such trade and who are covered by the provisions of the drawback law.

H.R. 4316, as written, has one undesirable feature. This is its requirement that merchandise covered by the bill, to be eligible for its benefits, must be imported and exported by the same person. This requirement is at odds with the practices of the real world of international trade and would substantially defeat the purposes of the proposed legislation. The fact is that a major portion of merchandise which would be covered by this proposal is customarily imported by some person other than the exporter. In very many instances, the exporter acquires the merchandise from another person who was the importer under the provisions of Certificates of Delivery and /or Exchange Agreements. This is the way in which the import-export trade of the United States is frequently conducted. H.R. 4316 as now written would, in effect, rule out all "indirect" imports.

We submit, therefore, that the requirement that the same person be both importer and exporter of the subject merchandise be modified and that, in its place, there be adopted a requirement that possession of and title to such merchandise must have been taken by the person exporting. This could be accomplished by amending lines 1 through 5 on Page 2 of H.R. 4316 to read as follows (language to be added is italicized, language to be deleted is bracketed):

Of its importation; or (ii) an aggregate of such imported merchandise and fungible merchandise; *possession of and title to* either of which has been [imported] *taken* by a person prior to the subsequent exportation by the same person of such [commercially identical] *fungible* merchandise—

(In the foregoing we have suggested that the word "fungible" be substituted for the words "commercially identical" in line 4 to be more consistent with other language of the bill. We note also that there is an apparent typographical error on line 9 of page 2 of the bill. The semi-colon following the word "fungible" should probably be "to").

We believe that these changes would meet certain objections raised by the Customs Service and adverted to in Congressman Frenzel's introductory remarks to H.R. 4316. Requiring possession of the imported merchandise by the drawback claimant prior to the export of the "fungible" goods would eliminate the possibility of an importer cooperating with another party, who was an exporter but who never had possession of the imported merchandise, to enter into an arrangement for the collection of "same condition" drawbacks.

SUMMARY

This basic concept has the strong endorsement of NCITD. Its genesis was in the Drawback Committee of this organization. We believe that it will further the Congressional intent of all drawback legislation; i.e. to further both United States manufacturing and commercial activities through the encouragement of exports.

Moreover, the view has been generally expressed by interested observers that the Same Condition Drawback Statute (19 U.S.C. 1313 (j)) has been applied in a restrictive fashion, so as to curtail benefits which had been expected to accrue to American exporters with the enactment of that original legislation. H.R. 4316, with the amendments proposed above, would correct this situation.

Substitution for same condition drawback purposes will make a further contribution to United States export activities through the removal of still more restraints against those exports. To support this contention we submit the following:

COST

Ultimate destination of an export order generally determines the port of exit. Material eligible for same condition drawback may be located at the opposite end of the country, while fungible material of the same kind and quality, which could be substituted, may be located adjacent to the port of export. Under today's situation the cost of inland transportation has to be added to the total cost of the material eligible for drawback. This could price the material out of the competitive foreign market.

TIME

In the interests of time in order to meet a delivery date, shipment from the location nearest to the port of export may be necessary. Drawback applicable to material at another location is thereby denied. Shipping without benefit of drawback may make the market price unattractive to the U.S. exporter.

PRACTICALITY

To offset natural deterioration of material, selling and shipping the oldest stock may be required as a matter of practice. The material shipped to fill an export order under such a procedure may not be eligible for any, or all, of the drawback for which the exporter might otherwise be eligible under substitution.

Drawback eligible material may be in a shipping or packaging form other than that specified by the export order. Substitution would allow drawback without imposing both cost and time components on the exporter which would result from repackaging, when non-drawback eligible material in the specified form was available.

The restraints detailed above, and the burdens they impose, can remove the United States exporter from competition in a foreign market. A diminution of United States export activity, with all the adverse economic results that follows, can be foreseen.

We appreciate this opportunity to convey our views on this legislation. We stand ready to assist your Subcommittee in any way we can to achieve the adoption of this important and noteworthy legislation.

Statement of John S. Rode, Counsel, on Behalf of the Joint Industry Group

H.R. 4316

This statement is submitted on behalf of the Joint Industry Group, which is a coalition of trade associations, and the businesses they represent, interested in the technical aspects of international trade, and especially Customs matters. This statement is supported by:

Air Transport Association of America
American Electronics Association
American Association of Exporters & Importers
American Retail Federation
Chamber of Commerce of the United States
Cigar Association of America
Computer & Business Equipment Manufacturers Association
Council of American-Flag Ship Operators
Electronic Industries Association
Foreign Trade Association of Southern California
International Hardwood Products Association
Motor Vehicle Manufacturers Association
National Association of Photographic Manufacturers
National Committee on International Trade Documentation
National Customs Brokers and Forwarders Association
National Foreign Trade Council

Scientific Apparatus Makers Association

The Joint Industry Group supports the proposed modifications of the Same Condition Drawback statute, Section 1313(j) of the Tariff Act of 1930, which are contained in H.R. 4316, and, in addition, recommends some additional changes to that provision of the law which, we think, would permit American exporters to realize the full benefits which that statute was intended to provide.

Many of the companies represented in the Joint Industry Group are multi-national corporations which operate facilities located within the United States as well as throughout the world. Many of the members of the Joint Industry Group are both importers and exporters with obvious interests in international trade and a compelling need to be competitive in the markets of the world. The companies represented by the Joint Industry Group now face substantial competition in those markets, and must meet that competition notwithstanding rising costs and the current strong position of the United States dollar, both of which have combined to make their products less price competitive by comparison with those articles which originate in other countries.

For nearly two centuries, the Congress of the United States has recognized the role of drawback in our export trade, by including provisions for the payment of drawback in the Tariff Act of 1789, the second law passed by the First Congress of the United States, and by maintaining drawback provisions in the Tariff Acts of this country from that time to the present. More than one hundred amendments and modifications have been made to the drawback laws to date, the most recent being the passage of Public Law 96-609, which added a new Subsection (j) to Section 1313 of the Tariff Act of 1930, and made it possible for exporters to receive refunds of duty paid on imported merchandise exported in the same condition as when that merchandise entered the United States, and in addition, provided that certain "incidental operations" could be performed on imported merchandise without disqualifying them for the benefits of Subsection (j). This, the so-called same condition drawback law, took effect on December 28, 1980.

Our experience with the current same condition drawback law indicates that there are areas in which we think the law might properly be amended to better effect the ends to which that law was originally addressed, by: (1) Enhancing the competitive position of U.S. exporters in foreign markets by reducing the cost of their products as a consequence of refunding duties paid upon their importation; and (2) Encouraging businessmen to maintain and establish facilities in the United States, rather than overseas, by reducing the net duties payable by those businessmen, and thereby reduce the cost of operating such facilities in the United States through payment of drawback. This is a process that will create jobs in the United States.

As enacted, the same condition drawback law authorizes the payment of drawback upon the exportation of imported articles which have not been "used" and are, except for the performance of "incidental operations," in the "same condition" as when those articles were imported. Over the last 2½ years, significant, practical problems have arisen in three areas:

1. United States exporters commonly procure commercially interchangeable products from more than one source; such dual-sourcing serves to protect the buyer from losses which might otherwise be incurred in the event that a single vendor-supplied item became unavailable by reason of natural disaster or other unforeseeable interruption in delivery. It has become increasingly desirable, and usual, to source the essential parts of articles from both domestic and overseas vendors. Inasmuch as Section 1313(j) is limited to the payment of drawback upon the exportation of imported articles, the United States exporter must either maintain segregated inventories of United States and foreign sourced articles so that he can positively identify the origin of otherwise commercially indistinguishable components or forego drawback to which that exporter would otherwise seem entitled. Clearly, either course of action on the part of the exporter involved added elements of cost that were not contemplated upon the enactment of the same condition drawback law. As introduced, H.R. 4316 would permit the substitution of "fungible" merchandise for imported merchandise without denying the exporter the benefits of drawback upon its exportation, and, in addition, provides specifically for the payment of drawback upon the exportation of an aggregation of imported merchandise and other fungible products. In these regards, H.R. 4316 would substantially conform Section 1313(j) to the corresponding provisions of Section 1313(b) and would clearly eliminate any need for additional costs incurred in the maintenance of separate inventories. The Joint Industry Group fully endorses these changes to the drawback statutes and urges their enactment into law.

2. A significant difference in opinion as to the applicability of Section 1313(j) has arisen with respect to packaging operations performed in the United States upon imported or domestic merchandise. Examples of the particular problems which have arisen with respect to packaging materials include the question of whether the filling of an imported box, bottle, can, or other container is a "use" of that article which render such container ineligible for drawback upon exportation.

3. Although the drawback status of packaging materials represents a very specific problem area under Section 1313(j), it is also illustrative of the difficulty which has been encountered in the practical application of that portion of Section 1313(j) which permits the performance of "incidental operations" upon imported merchandise without disqualifying the same from eligibility for payment of drawback upon their exportation. The term "incidental operations" is not defined clearly in the existing statute, so that there is no objective standard for determining whether a given operation may or may not be performed without loss of potential drawback. We recognize the difficulties which are inherent in attempting to draft objective standards to cover unforeseen factual situations and the manufacturing technology of tomorrow, and at the same time, we recognize the fact that certain generic classifications of operations necessarily blur distinctions in degree which are of commercial and legal significance. Thus, for example, certain packaging operations may involve extremely modest manipulations of the materials employed, so that all would conclude that such operations were indeed "incidental," and resulted in no change of condition or use of the materials employed. On the other hand, other packaging operations necessarily involve substantial transformations of the materials employed so that, similarly, all concerned would recognize that those particular operations were tantamount to a manufacture or production which would ordinarily be cognizable under other provisions of the drawback laws, i.e., Section 1313(a) or Section 1313(b). Prudent businessmen, we think, should be willing to conform to the statutory and regulatory requirements of Section 1313 (a) or (b), where substantial manufacturing is involved, or to the requirements of 1313(j), in the event such operations are truly "incidental". By the same token, the exporter should be prepared to determine, in advance, which statutory and regulatory framework is to be followed with respect to particular operations. The real problem, and the problem which we think should be eliminated by appropriate amendments to Section 1313(j), is that the interpretation of existing law suggests there are operations which are more than "incidental" and are less than "manufacture or production" so that performance of those operations disqualifies the article upon which they are performed from drawback in either instance. For this reason, we have suggested that the term "incidental operations" should be defined so as to include all of those operations "which do not constitute manufacture or production for drawback purposes" under Sections 1313(a) through 1313(h).

In summary, then, the Joint Industry Group supports the proposed amendment of Section 1313(j) in the manner proposed in H.R. 4316, and further recommends that this Committee consider additional technical modifications to the bill which will further clarify the problem areas identified above; our specific comments and draft proposals were previously submitted to Congressman Frenzel in connection with H.R. 3157, and, for that reason, will not be replicated here.

THE PILLSBURY CO.,
Minneapolis, MN, November 14, 1983.

Hon. SAM GIBBONS,
Chairman, House Ways and Means Trade Subcommittee,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN GIBBONS: As a corporation actively involved in international trade, The Pillsbury Company urges the committee members to support H.R. 4316. The Legislation, which does not provide for additional drawback benefits, addresses certain storage and transportation problems the industry has frequently experienced under current law. For example, the legislation would permit the Pillsbury Company to co-mingle certain types of the same imported/domestic product. That being the case, the cost of storage and transportation would be reduced and the savings could be passed on to the consumer.

The Pillsbury Company also feels that the congress must focus greater attention on international trade matters, with a foreign trade deficit estimated to be over 50 billion dollars in 1983, Congress may want to consider providing export incentives to American industry. If Congress should fail to address these problems, American firms will continue to lose additional market share to subsidized competition. The result of which translates into higher domestic prices for the consumer.

Thank you for your time and consideration of this matter.

Sincerely,

GERALD L. OLSON,
Vice President, Government Relations.

H.R. 4321

To repeal the existing suspension of duty on carob flour.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Mr. Chairman, during its 97th session, the Congress enacted Public Law 97-446 which provided for a temporary duty suspension on imported carob flour through December of 1984. It is my understanding that this action was a result of an administrative oversight on the part of the International Trade Commission.

In light of the fact that carob flour producers in my state have been adversely affected by this action, I am pleased to support H.R. 4321, which would correct this error by re-enacting the carob flour duty.

Thank you.

H.R. 4329

To extend until July 1, 1987, the existing suspension of duty on 4-chloro-3-methylphenol.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 6, 1983.

Hon. SAM M. GIBBONS,
Chairman, Subcommittee on Trade,
House of Representatives, Washington, DC.

DEAR SAM: I have recently introduced a bill to provide another three year extension of the existing duty suspension for the chemical 4-chloro-3-methylphenol.

My new legislation is virtually identical to a bill I introduced in the 97th Congress, which was passed as H.R. 4566, the Miscellaneous Tarriff Act, in Section 230 of Public Law 97-446. That law, enacted January 12, 1983, provided for suspension of duty on that chemical for the three year period ending on June 30, 1984. This new bill extends the duty suspension until July 1, 1987. It should be noted that there was not objection by any agency or business to the original passage of the duty suspension on the chemical in question.

The attached statement provides the rationale for my new bill. I respectively request that my legislative initiative be considered before the adjournment of this session, if possible.

Best wishes,
Sincerely,

PHILIP M. CRANE,
Member of Congress.

Attachment.

[H.R. 4329, 98th Cong. 1st sess.]

A BILL To extend until July 1, 1987, the existing suspension of duty on 4-chloro-3-methylphenol.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That item 907.08 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "6/30/84" and inserting in lieu thereof "6/30/87".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after June 30, 1984.

EXTENSION OF TEMPORARY SUSPENSION OF DUTY OF 4-CHLORO-3-METHYLPHENOL

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 8, 1983

● Mr. PHILIP M. CRANE. Mr. Speaker, section 230 of Public Law 97-446, enacted January 12, 1983, provides for the temporary suspension of the column 1 rate of duty on 4-chloro-3-methylphenol through June 30, 1984. This suspension should be extended through June 30, 1987, for the reasons set forth below: 4-chloro-3-methylphenol is a chemical substance used in production of a number of products including machine cutting oils. It has not been produced in the United States since 1973. Domestic consumers must rely on imports for their needs of the chemical. Master Chemical, for example, is an Ohio firm which must import 4-chloro-3-methylphenol for use as an emulsion stabilizer in the production of one product which constitutes 60 percent of its business.

If a duty were to be again applied, it would be at a rate significantly higher than that in effect prior to enactment of the Trade Agreement Act of 1979.[1]

This act doubled the duty on 4-chloro-3-methylphenol in 1980 so that its cost increased as much as 17.4 percent to domestic consumers. Thus failure to extend the suspension would cause substantial harm to domestic consumers of the chemical through increased prices while causing no benefit to accrue to domestic producers.

DESCRIPTION AND USES

4-chloro-3-methylphenol—sometimes referred to as P-chlorometa-cresol—is an organic chemical used primarily as a biocide and antioxidant in the manufacture of machine cutting oils. It is also used as an ingredient in such products as dandruff shampoos and hand lotions, as a preservative for sensitive film such as microfilm and X-ray film, and as an intermediary in the formulation of more complex chemicals.

DOMESTIC COMPETITION

According to the domestic consumers of 4-chloro-3-methylphenol, there are no domestically produced chemicals which can be substituted for 4-chloro-3-methylphenol in the manufacture of machine cutting oils.[2] Nor are there substitutes which can be used as chemical intermediaries in the formulation of specific chemicals.

DOMESTIC PRODUCTION

There has been no domestic production of 4-chloro-3-methylphenol since 1973. In that year the Ottawa Chemicals Division of Ferro Corp. halted production due to increasingly stringent environmental regulations.

TARIFF TREATMENT

Prior to the temporary suspension of duty, 4-chloro-3-methylphenol entered the United States under item 403.56 of the tariff schedules of the United States (TSUS). This item is a residual category of phenol derivatives which are listed in the chemical appendix of the tariff schedules.

With the suspension of duty, 4-chloro-3-methylphenol was removed from TSUS item 403.56. The new TSUS item, No. 907.08, was created for it under subpart B of part 1 of the appendix to tariff schedules.

If the suspension is not extended, 4-chloro-3-methylphenol would again be dutiable at the rate applicable to TSUS item 403.56. In 1984, the column 1 rate for item 403.56—the rate paid by countries with most-favored-nation status—will be 1.1 cents per pound plus 19.4 percent ad valorem. This rate is scheduled to decline annually until it reaches 0.7 cents per pound plus 19.4 percent ad valorem in 1987. This is nonetheless still significantly above the rate that was applicable to 4-chloro-3-methylphenol in 1979. At that time the rate was 1.7 cents per pound plus 12.5 percent ad valorem.

Other rates of duty applicable to TSUS item 403.56 are an LDDC rate[3] of 0.7 cents per pound plus 19.4 percent ad valorem and a column 2 rate of 7 cents per pound plus 62 percent ad valorem.[4] These rates were unaffected by the legislation granting temporary suspension of duty on 4-chloro-3-methylphenol.

U.S. IMPORTS

Imports in the United States of 4-chloro-3-methylphenol for 1960 and 1981 were as follows:

Year:[1]	Quantity (lbs.)[1]
1960	106,293
1981[5]	274,472

[1] International Trade Commission, imports of benzenoid derivatives.

LOST REVENUE

Prior to enactment of the initial temporary suspension of duty, the International Trade Commission estimated that total lost revenue for the years 1981-83 would be $323,400. The lost revenue figure for the next 3 years should be close to this figure since usage patterns appear similar.

POSITION OF AGENCIES

The Department of Commerce, the Department of State, and the International Trade Commission had no objection to the initial suspension of duty. Although their position regarding an extension of the suspension is not explicitly known at this time, there is little reason to suppose that the extension would be opposed since no material parameters have changed since January 12, 1983, when Public Law 97-446 was enacted.

CONCLUSION

For all the above reasons, but primarily because there is no domestic producer of 4-chloro-3-methylphenol to derive benefit from reimposition of a duty on the chemical, I have again introduced legislation to extend the suspension of duty until June 30, 1987.●

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[1] The Trade Agreement Act of 1979 created several "basket" categories of benzenoid derivatives and based the new rate of duty on an average of the ad valorem equivalents of the individual items. As a result, certain items which had been assessed at a low tariff rate were assessed at a much higher rate after 1979.

[2] USITC's Memorandum to the Committee on Ways and Means of the U.S. House of Representatives on H.R. 2786, 97th Congress, May 26, 1981, p. 2.

[3] The LDDC rate is the rate paid by least developed developing countries.

[4] The column 2 rate applies to Communist and areas enumerated in general headnote 3(f) of the TSUS.

[5] 1981 is the latest year for which the ITC has data.

H.R. 4339

To amend the Tariff Schedules of the United States regarding the classification of certain articles of wearing apparel.

No comments were received on this bill.

WRITTEN COMMENTS

[Press release No. 29, Monday, March 12, 1984]

HON. SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES FORMAT FOR CONCLUDING HEARINGS ON CERTAIN TARIFF AND TRADE BILLS PREVIOUSLY CONDUCTED ON NOVEMBER 15, 1983

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that due to the large number of miscellaneous tariff and trade bills originally scheduled for public testimony on November 15, 1983 (see Subcommittee press releases numbered 19, 20, 21, and 22) and the limited time available to the Subcommittee, it will not be possible at the present time to receive further oral testimony on such bills. However, the Subcommittee is instead requesting that written testimony be submitted on these bills by all interested parties, so that further consideration and possible markup can be completed in a timely manner. In addition to those bills originally scheduled for hearings on November 15, written comments are also requested for other miscellaneous tariff and trade bills introduced thus far in the 98th Congress for which Subcommittee action is being considered. Those bills for which comments will be considered are listed below.

If written comments indicate any significant controversy over a particular bill, oral testimony would be scheduled prior to Subcommittee action.

At a later date, the Subcommittee will request further written comments on bills introduced subsequent to this press release for possible consideration in this session. However, as mentioned in our January 25, 1984, "Dear Colleague" letter, bills introduced after April 13 will not considered this session.

Further public hearings will be scheduled in the near future for two major bills which were originally scheduled to be heard on November 15 with the miscellaneous tariff and trade bills. These are H.R. 3795, the Wine Equity Act of 1983, and H.R. 3727, a bill to eliminate import quotas on sugar. The hearing on these bills will be announced at a later date.

The tariff and trade bills on which written testimony will be received are:

H.R. 2471.—(Mrs. Boggs): To apply duty-free treatment with respect to articles exported for purposes fo rendering certain geophysical or contracting services abroad and returned.

H.R. 2641.—(Mr. Frenzel): Relating to the tariff treatment of precious stones exported for processing abroad into jewelry solely for the personal use of the exporter.

H.R. 2667.—(Mr. Thomas of Calif.): To suspend until July 1, 1988, the duty on yttrium bearing ores, materials and compounds containing by weight more than 19 percent but less than 85 percent yttrium oxide equivalent.

H.R. 2711.—(Messrs. Vander Jagt, Jenkins and Campbell et al): To amend the Tariff Schedules of the United States to impose a one-tenth of 1 cent duty on apple and pear juice.

H.R. 2776.—(Mr. Ratchford, Mrs. Kennelly, et al): Relating to the tariff treatment of gut imported for use in the manufacture of surgical sutures.

H.R. 2851.—(Mr. Frank): Relating to the duty on certain knives (commonly known as snap blade tools) having movable blades.

H.R. 2947.—(Mr. Pease): To provide for the temporary suspension of duty on the importation of fluorspar.

H.R. 3158.—(Mr. Gibbons): To implement the Customs Convention on Containers, 1972.

H.R. 3159.—(Mr. Gibbons): To require that customs duties determined to be due upon a liquidation of reliquidation are due upon that date, and for other purposes.

H.R. 3174.—(Mr. Matsui): Relating to the tariff treatment of certain telescopes not designed for use with infra-red light.

H.R. 3311.—(Mr. Vander Jagt): To suspend for a 3-year period the duty on (Bicyclohexyl)-1-carboxylic acid 2-(diethylamino)ethyl ester hydrochloride.

H.R. 3312.—(Mr. Vander Jagt): To suspend for a 3-year period the duty on 1-Piperidinebutanol, alpha-[4-(1,1-dimethlethyl) phenyl]-4-(hydroxy-diphenylmethyl).

H.R. 3313.—(Mr. Vander Jagt): To suspend for a 3-year period the duty on 2-[4-(2-Chloro-1, 2-diphenylethenyl)-phenoxyl]-N,N-diethylethanamine dihydrogen citrate.

H.R. 3445.—(Mr. Conable): To suspend temporarily the duty on diphenyl guanidine and di-ortho-tolyl guanidine.

H.R. 3709.—(Mr. Guarini): To extend the existing suspension of duty on natural graphite until January 1, 1988.

H.R. 3731.—(Mr. Vander Jagt): To extend temporary suspension of duties on certain clock radios until September 30, 1987.

H.R. 3740.—(Mr. Albosta): To suspend for a three-year period the duty on 3-(Hydroxydiphenyl-acetyl) oxy)-1,1-dimethylpiperidinium bromide.

H.R. 3741.—(Mr. Albosta): To suspend for a three-year period the duty on 5H-Dibenz (b,f) azepine-5-propanamine, 10, 11-dihydro-N-methyl-, monohydrochloride.

H.R. 3742.—(Mr. Albosta): To suspend for a three-year period the duty on hydrazone, 3-(4-methylpiperazinyliminomethyl) rifamycin SV.

H.R. 3817.—(Mr. Hance and Mr. Frenzel): To apply for a 5-year period a lower rate of duty on ethyl and methyl parathion.

H.R. 4035.—(Mr. Jacobs): To suspend temporarily the duty on a certain chemical intermediate.

H.R. 4218.—(Mr. Britt): To extend duty-free treatment to Meta-toluic acid (MTA).

H.R. 4223.—(Mr. Moore): To suspend for a three-year period the duty on 4-0-beta-D-Galactopyranosyl-D-fructose.

H.R. 4224.—(Mr. Moore): To suspend for a three-year period the duty on nicotine resin complex.

H.R. 4225.—(Mr. Moore): To suspend for a three-year period the duty on an iron dextran complex.

H.R. 4232.—(Mr. Brooks): To amend the Tariff Schedules of the United States to clarify the classification of any naphtha described as both a petroleum product and a benzenoid chemical.

H.R. 4255.—(Mr. Frenzel): Providing for a reduction in the duty on certain fresh asparagus.

H.R. 4296.—(Mr. MacKay, Mr. Matsui, Mr. Hance, Mr. Thomas of Calif., et al): To amend the Tariff Schedules of the United States to establish equal and equitable classification and duty rates for certain imported citrus products.

H.R. 4316.—(Mr. Frenzel): To amend the Tariff Act of 1930 regarding same condition drawbacks and same kind and quality drawbacks, and for the other purposes.

H.R. 4321.—(Mr. Sisisky): To repeal the existing suspension of duty on carob flour.

H.R. 4329.—(Mr. Philip M. Crane): To extend until July 1, 1987, the existing suspension of duty on 4-chloro-3-methylphenol.

H.R. 4339.—(Mr. Guarini): To amend the Tariff Schedules of the United States regarding the classification of certain articles of wearing apparel.

H.R. 4353.—(Mr. Heftel): A bill relating to the tariff classification of salted and dried plums, and for other purposes.

H.R. 4378.—(Mr. Frenzel): To suspend the duty on sulfaquinoxaline until the close of December 31, 1986.

H.R. 4379.—(Mr. Frenzel): To suspend the duty on sulfathiazole until the close of December 31, 1986.

H.R. 4380.—(Mr. Frenzel): To suspend the duty on sulfanilamide until the close of December 31, 1986.

H.R. 4381.—(Mr. Frenzel): To suspend the duty on sulfamethazine until the close of December 31, 1986.

H.R. 4382.—(Mr. Frenzel): To suspend the duty on sulfaguanidine until the close of December 31, 1986.

H.R. 4443.—(Mr. Jones of Oklahoma): To continue until the close of June 30, 1989, the existing suspension of duties in certain forms of zinc.

H.R. 4482.—(Messrs. Archer and Hance): A bill to amend the Tariff Schedules of the United States with respect to the classification of certain diamond articles.

H.R. 4513.—(Mr. Green): A bill to extend for four years the temporary suspension of duty on tartaric acid and certain tartaric chemicals.

H.R. 4647.—(Mr. Frenzel): To apply a reduced rate of duty to certain dried egg yolk processed from eggs produced in the United States and exported to Canada for use in the manufacture of lysozyme.

H.R. 4695.—(Mr. Edwards of Alabama): To amend the Tariff Schedules of the United States to impose a duty on tubeless tire valves.

H.R. 4765.—(Messrs. Albosta, Vander Jagt, Downey, Shannon, et al): To amend the Tariff Schedules of the United States to impose a duty on tubeless tire valves.

H.R. 4790.—(Mr. Clinger): To suspend for three years the duty on crude 8+5 hydroxyquinolines.

H.R. 4825.—(Mr. Conable): To provide for a temporary reduction in duty on imported fresh, chilled, or frozen Brussels sprouts.

H.R. 4887.—(Mr. Vander Jagt): To permit until January 1, 1987, the duty-free entry of magnetron tubes used in microwave cooking appliances.

H.R. 4891.—(Mr. Archer): To provide duty-free treatment to certain cresylic acid.

H.R. 4899.—(Mr. Frenzel): To suspend the duty on acetylsulfaguanidine until the close of December 3, 1986.

H.R. 4901.—(Mr. Hughes): A bill, superseding H.R. 3299, to amend the Controlled Substances Act, the Controlled Substances Import and Export Act, and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes.

H.R. 5010.—(Mr. Pease): A bill relating to the tariff treatment of zinc-bearing ores, zinc dross and skimmings, zinc waste and scrap, unwrought zinc, and certain zinc-bearing materials.

DETAILS FOR SUBMISSION OF WRITTEN STATEMENTS

Persons submitting written statements should submit six (6) copies of their statement by the close of business Friday, March 30, 1984, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, DC 20515.

Each written statement submitted to the Subcommittee for the record must contain the following information:

1. The name, full address, and capacity of the person submitting the statement (as well as a telephone number where he or his designated representative may be reached;
2. A list of any clients or persons, or any organization on whose behalf the statement is submitted; and
3. A topical outline or summary of the comments and recommendations in the statement.

H.R. 2471

To apply duty-free treatment with respect to articles exported for purposes of rendering certain geophysical or contracting services abroad and returned.

No comments were received on this bill.

H.R. 2641

Relating to the tariff treatment of precious stones exported for processing abroad into jewelry solely for the personal use of the exporter.

STATEMENT OF HON. BILL FRENZEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

H.R. 2641, regarding tariff treatment of precious stones owned by individuals and exported for placement in a jewelry setting shall not be dutiable under our tariff laws.

This bill was not requested by anyone, but was introduced to address a recent problem I had with a constituent, a problem that I assume many other people have had and probably never reported. My constituent will not be helped by this bill, since it has no retroactive provision, but my intent is to help people in the future who will be faced with the same situation.

My constituent owned a large diamond that he chose to take abroad to place in a gold setting. He called our local Customs office and asked what he would have to do to ensure no duty payment on the diamond and was wrongly advised that all he would need is a receipt proving ownership of the diamond. Upon entering US Customs territory, and declaring duty owed on the value of the setting—about $200—my constituent was told he would have to pay a $2,000 duty on the value of the whole necklace, an amount he could not pay after a costly trip to the Far East. Needless to say, the constituent was rather shocked after hearing the advice from the local Customs office.

Actually, the local Customs office should have advised him that the only way to avoid payment of duty on the diamond would be to bring the diamond and its setting in separately and have the stone mounted here. I assume that many other individuals are paying needless duty in the same manner, never dreaming that they would have to pay duty on something they owned previously and took out of the country themselves.

I understand that the Administration has problems with the implementation of the bill and has made some suggestions for improvement. Their proposal to add a new item 806.40 to deal with this situation is a good one, as I can understand how this change would not concern itself directly to 806.20, as is the case in my bill. The suggestion to change the first sentence of headnote 2 to include a 806.40 is also appropriate. Another suggestion to change the language on page 2 of my bill, lines 4-6, to include the stone and the setting as being eligible for duty rather than just the stone is also a technical change which should be made. On page 1, I refer to exportation of a "stone" which could limit the use of the bill to just those individuals who have one stone to place in a setting. My intent here was to discourage any use of this provision by jewelers who may find the legislation advantageous to their business. However, I would not want to affect the traveler who has several stones he or she wants to set into one or more settings, and would therefore agree that the word should be changed to "stones".

To protect US jewelery manufacturers against jewelers taking their setting business abroad, the bill stipulates that if an article of jewelry set abroad is sold within three years, duty than becomes payable on the whole item. I understand that this would be very difficult for Customs to administer and could further cause a burden on the importer if a bond for forfeiture value is required. I would request that the Customs Service work with me to develop a method to alleviate this burden, yet protect the individual traveler. Perhaps a limit of say, three, items set abroad would solve some of the concerns of the Administration or the domestic producers.

Since I believe the current law is wrong to require the payment of duty on materials previously owned by individuals, I hope that a compromise can be worked out and that the changes can be made that I have suggested.

It is, further, possible that Customs could clarify the law with respect to setting jewels abroad in its brochure distributed to returning travelers. I urge that the brochure be so updated. Withdrawal of this bill will be considered at that time.

H.R. 2667

To suspend until July 1, 1988, the duty on yttrium bearing ores, materials and compounds containing by weight more than 19 percent but less than 85 percent yttrium oxide equivalent.

No comments received on this bill.

H.R. 2711

To amend the Tariff Schedules of the United States to impose a one-tenth of 1 cent duty on apple and pear juice.

STATEMENT OF HON. GEORGE C. WORTLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Will Rogers once said, "I'll tell you folks, all politics is applesauce." If those of us who serve in Congress took those words to heart, we would show a greater interest in the apple industry. If apples and apple products received more attention on Capitol Hill, we would be keenly aware of the detrimental effect apple juice imports have on our nation's apple producers.

The apple industry has not received the attention it deserves. Like other agriculture industries, the apple industry has suffered in the past few years because of the increase in imports. At a time when demand for apple juice and cider has risen dramatically, we have seen that demand filled by our agricultural competitors, not our own producers. In 1982, we imported apple juice from 17 foreign countries.

In 1978, the year the "Christian Science Monitor" describes as, "The year consumers rediscovered apple juice and cider," sales increased 150 percent—to $306.4 million. That rise has continued steadily. Sales of $562 million were reported in 1982. The 1983 figures are expected to be even higher.

Sadly, though, we have seen imports for the same period jump from over 31 million gallons in 1977 to 149 million gallons in 1983. The 1983 import statistics represent over 44 million bushels of fresh apples—nearly the equivalent of 25 percent of the total U.S. apple production for that year. U.S. Department of Agriculture trade statistics for 1982 list the dollar value of apple and pear juice imports at $92 million—up 50 percent from 1981.

The rise in imports has taken its toll. In 1982, apple growers received approximately 8.5 cents per hundredweight for juice apples. Imports have cut that to 3.5 cents per hundredweight. Washington State apple producers are receiving less than half per ton for juice apples than they received last year.

As a time of rising demand for a quality product, we cannot turn our backs on the damage being caused by foreign imports—automakers are not the only ones suffering.

My colleague, Representative Guy Vander Jagt, has introduced legislation, H.R. 2711, to help our apple producers. His bill would impose a one-tenth of one cent duty on apple and pear juice imports. I have cosponsored that bill, as have 48 other Members, to curb juice imports. I hope that you will give favorable consideration to the bill—keeping in mind the livelihood and future of the 15,000 apple producers from New York to Washington State.

As the demand for apple juice expands, U.S. apple producers should be given first priority in satisfying that growing market.

STATEMENT OF ELTON SMITH, VICE PRESIDENT, AMERICAN FARM BUREAU FEDERATION, AND PRESIDENT, MICHIGAN FARM BUREAU

Farm Bureau appreciates the opportunity to comment on the following miscellaneous tariff bills which have been referred to the Subcommittee on Trade: H.R. 2711, H.R. 4255, H.R. 2776, H.R. 4296.

H.R. 2711, Re: Apple Juice

The purpose of the 1/10 of 1 cent per gallon duty on apple and pear juice imports is merely a way to place subsidized Argentine apple juice imports in a dutiable category enabling apple growers or their processing cooperatives to file a countervailing duty petition without incurring the tremendous expense of proving "injury" to the domestic apple industry.

Farm Bureau is keenly interested in the passage of H.R. 2711. This bill was introduced by Congressman Vander Jagt and now has 48 cosponsors.

Over the past seven years, the quantity of apple juice imported into the United States has grown from 34.38 million gallons (single strength equivalent) in 1976 to 103.76 million gallons in 1982. Foreign apple juice is imported in concentrated form for reconstitution in this country. This represents the equivalent of more than 30 million bushels of apples, a figure greater than the average annual production of Michigan and Pennsylvania combined.

Twenty-three (23) million gallons of the increase are from Argentina which shipped 18.86 million gallons in 1976 and 41.95 million gallons in 1982. The quantity imported in 1981 represents 10.67 million bushels of apples, more from Argentina alone than the total annual apple production for the State of Virginia.

The dramatic increase in apple juice imports is a major concern to U.S. apple growers. Their concerns are magnified when we find that the government of an exporting nation is providing a substantial subsidy to the processors and exporters of that product. Farm Bureau finds a willingness of its members to compete with growers in other countries on a fair basis, but they cannot compete with the treasuries of other countries.

The appendix of our statement contains data providing the levels of imports from foreign sources for the period 1965–1983, and the quantities of apples represented by such imports. Also in the appendix is a review of the subsidy schemes provided by the Argentine Government to its apple industry to develop export capabilities.

It is obvious from the information available to us that the Government of Argentina is indeed subsidizing its exports of apple juice into the United States' market to the detriment of U.S. apple growers and processors of domestic apple juice.

The Tariff Schedule of the United States provides a zero (0) duty on apple and pear juice imported from countries which enjoy the "Most Favored Nations" designation. Argentina has been so designated. Imports of apple and pear juice from countries not enjoying "Most Favored Nations" designation are subject to a duty of five (5) cents per gallon under T.S.U.S. Item No. 165.15 Apple and pear juice are the only juice imports free of duty under the M.F.N. category.

Since apple juice currently is not dutiable, the domestic apple juice industry would have to allege and the International Trade Commission would be required to determine "material injury" before a countervailing duty could be put into place to offset the Argentine subsidy advantage. Therefore, the purpose of H.R. 2711 is to impose a minor duty on apple juice imports in order to place Argentina in a category whereby the Department of Commerce could investigate the export subsidies of Argentina with regard to apple juice and, if found to be as alleged, could initiate a countervailing duty action that would offset the Argentine subsidy advantage. This could be done without apple growers having to resort to costly legal fees to take their case before the International Trade Commission to prove material injury to the apple juice industry.

Farm Bureau will encourage those suffering from this practice to seek relief by petitioning the U.S. Department of Commerce to investigate these subsidies and if their findings are positive to instruct the Customs Sevice to apply countervailing duties as provided under Section 303 of the Tariff Act of 1930.

We urge that H.R. 2711 be approved by your Subcommittee and that it be passed by the Congress to enable U.S. producers to seek relief from the subsidies provided by the Government of Argentina on apple juice exports from their country.

H.R. 4255, Re: Asparagus and H.R. 2776, Re: Imported Gut Sutures

H.R. 4255 would provide for a reduction in duty on certain fresh asparagus.

H.R. 2776 would provide for a reduction in duty on imported gut for surgical sutures.

Farm Bureau opposes H.R. 4255 and H.R. 2776 since these bills unilaterally reduce duty rates on products entered into the U.S. without obtaining a counter concession from our trading partners. Farm Bureau believes that any reduction in duties on products entered into the U.S. should be done in the trade negotiating process rather than done unilaterally without obtaining any trade benefit in return for the reduction.

H. R. 4296, Re: Orange Juice

H.R. 4296 would establish a clearer definition of the intended duties on "concentrated" and "not concentrated" orange juice.

Farm Bureau supports the addition of two new categories of the duty rate for citrus juice as proposed in H.R. 4296. Under provisions of this bill, duty rate for orange juice "not concentrated" and "other" will remain at the current level, but the new categories will clarify the existing classification so as to prevent entry of concentrated orange juice into a free trade zone for dilution to single strength juice to be entered into the United States at the lower "not concentrated" rate. In other words, this method of avoiding the proper duty on concentrated juices would be remedied.

Mr. Chairman, we will appreciate consideration of Farm Bureau's views on these miscellaneous tariff bills.

H.R. 2711, Re: Apple Juice

1. The purpose of the small duty increase on apple juice imports is merely to provide a to way to place subsidized Argentine apple juice imports into a dutiable category which would enable Farm Bureau to file a countervailing duty petition without the loss of time and tremendous expense of "proving injury" to the domestic apple industry.
2. Over the past seven years, the quantity of apple juice imported into the U.S. has grown from 34 million gallons in 1976 to 104 million gallons in 1982. This represents the equivalent of more than 30 million bushels of apples, a figure greater than an average annual production of Michigan and Pennsylvania.
3. Twenty-three million gallons of the increase are from Argentina, which shipped about 19 million gallons in 1976 and about 42 million gallons in 1982. This quantity alone represents the total annual apple production in the state of Virginia.
4. The Foreign Agriculture Service and other government agencies have the evidence that the Argentine Government does inded assist the producers and exporters of Argentine apple juice.
5. The apple growers of the U.S. are being hurt badly by the subsidized imports of apple juice from Argentina. These growers need help from their government in order to compete with the subsidized imports from Argentina. We realize that countervailing duty procedures are available, and we plan to exercise such procedures. However, if our farmers proving injury, this is time-consuming and very expensive, with cost running from $75,000 to several hundred thousand dollars to carry a petition through the necessary procedures.

H.R. 4255, Re: Asparagus and H.R. 2776, Re: Imported Gut Sutures

Farm Bureau opposes H.R. 4255 and H.R. 2776 since these bills unilaterally reduce duty rates on products entered into the U.S. without obtaining a counter concession from our trading partners. Farm Bureau believes that any reduction in duties on products entered into the U.S. should be done in the trade negotiating process rather than done unilaterally without obtaining any trade benefit in return for the reduction.

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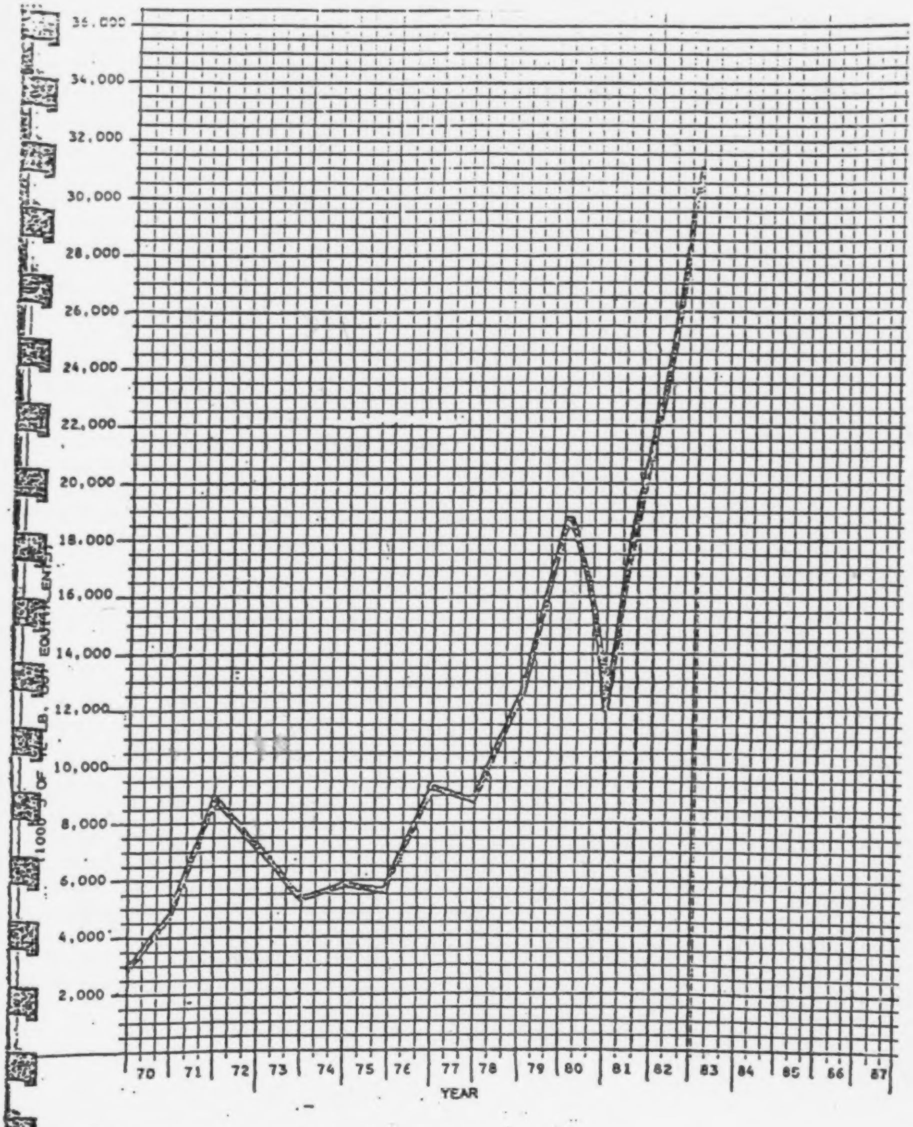
Mr. Chairman, we will appreciate consideration of Farm Bureau's views on these miscellaneous tariff bills.

APPENDIX

APPLE JUICE IMPORT BILL

H.R. 2711



SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

by the CAJ sector.

PREVIOUS LETTERS FROM FAS CABLED FROM ARGENTINA 6-29-81, Joseph F. Somers, AG Couns

- 1980 GOA established a 10% export rebate for fresh apples and pears.
- January, 1981, interest free loans with repayment of 10 years for CAJ exporters. ?
- February, 1981, export rebates of 10% for all products exported through Patagonian ports. (In April, 1981 this was reduced to 7%)

10-19-81 JAMES V. PARKER - AG Counselor

- June, 1981, CAJ was included in the "value added" products allowing CAJ exporters to exchange 10% of export earnings at the higher financial rate.
- August, 1981, prefinancing covering 60% of the FOB export value of CAJ. Repayment of one year and 1% per annum.

In 1977, Michigan apple grower Jerry Sietsema visited Argentina and toured CAJ plant. The plant manager told Mr. Sietsema:

a. The plant, Villa Regina, Argentina, is four years old and is tax free for 10 years (no property tax) because it is an apple juice plant.

b. There is a 10% direct subsidy on every dollar of product sold abroad.

TOTAL APPLE & PEAR JUICE IMPORTS

YEAR	TOTAL GALLONS	TOTAL 42 LB. BU.
1965	5,049,295	1,402,582
1966	3,080,203	855,612
1967	2,535,422	704,284
1968	10,908,738	3,030,205
1969	14,168,506	3,935,696
1970	16,834,532	4,678,759
1971	34,112,513	9,475,698
1972	25,632,907	7,120,252
1973	20,697,580	5,749,328
1974	21,495,957	5,986,623
1975	21,216,285	5,908,737
1976	34,387,544	9,576,259
1977	31,906,859	8,886,058
1978	44,394,152	12,363,770
1979	66,501,098	18,472,527
1980	43,520,365	12,089,324
1981	81,602,668	22,667,408
1982	103,758,056	30,880,374
1983*	63,560,371	18,973,245

*1983 JANUARY - MAY ONLY

FOR COMPARISON:

JANUARY - MAY 1982	28,448,347	8,492,044
JANUARY - MAY 1983	63,560,371	18,973,245

CONVERSION: 3.35 GAL/BU.

SOURCE: FAS-USDA, SINGLE STRENGTH EQUIVALENT GALLONS AND 42# BU RAW FRUIT EQUIVALENT

APPLE JUICE IMPORTS - S/S EQUIVALENT

COUNTRY	1976 GAL.	1976 42 LB. BU.	1977 GAL.	1977 42 LB. BU.	1978 GAL.	1978 42 LB. BU.	1979 GAL.	1979 42 LB. BU.	1980 GAL.	1980 42 LB. BU.	1981 GAL.	1981 42 LB. BU.	1982 GAL.	1982 42 LB. BU.
CANADA	151,718	42,253	1,225,333	341,311	945,974	263,494	449,434	124,843	441,977	122,771	1,418,218	393,949	1,323,249	399,000
AUSTRIA	126,373	35,195	370,029	103,053	276,938	77,127	1,063,959	295,544	1,594,972	443,047	870,000	241,899	3,776,489	1,127,370
BULGARIA	144,008	40,863	484,016	112,518	216,916	60,411								
FRANCE	419,275	172,466	1,885,776	525,109	1,111,901	309,844	5,678,321	1,577,311	4,160,047	1,155,568	1,491,651	461,014	1,948,382	581,807
GERMANY, WEST	28,126	7,833	73,849	20,567	14,493	4,025	920,711	255,753	2,775,882	771,072	4,700,790	1,881,303	14,248,726	4,257,223
ITALY	369,213	102,826	430,196	119,810	184,100	51,272	446,902	124,139	709,359	217,877	18,205	5,057	190,181	31,100
SPAIN	179,192	49,905	844,300	235,130	375,404	104,550	1,854,345	515,151	1,587,090	440,853	3,297,474	915,965	7,930,838	2,369,803
SWEDEN	2,420	674			7,049	1,943					71	20		
ARGENTINA	18,838,167	5,252,000	18,987,603	4,731,047	30,160,744	8,399,767	40,714,515	11,310,143	18,330,613	5,094,059	40,370,199	11,249,500	41,948,650	12,251,380
CHILE	57,751	16,084	30,310	8,497	778,261	216,746	733,630	203,766	439,228	127,563	2,152,007	597,700	1,423,377	484,582
MEXICO	158,757	44,214	344,235	95,869	394,566	109,887	822,758	228,543	1,351,808	375,502	2,422,317	672,866	3,024,918	907,941
AUSTRALIA	103,030	28,694	972,340	270,852	3,710	1,033			12,614	3,503	52,416	14,540	175,320	52,324
CHINA-MAINLAND	53	15	1,424	397	152	42	2,978	827	484	134				
ISRAEL	281,848	78,495	241,311	67,205	1,092,328	304,213	1,026,358	285,099	803,669	167,606	1,874,407	520,756	2,215,825	661,450
JAPAN	27,255	7,591	314	87					306	85			236	70
NEW ZEALAND	1,418,332	395,061	801,531	223,226	497,312	194,201	361,942	100,539	501,902	139,417	2,612,241	725,473	2,733,204	875,722
SOUTH AFRICA	11,859,828	3,302,962	4,604,931	1,282,979	4,717,044	1,313,697	7,740,099	2,152,249	7,607,375	2,113,140	12,019,392	3,339,776	10,905,628	3,257,611
URUGUAY											659,066	181,685		
OTHER			2,838,739	732,903	3,417,302	949,231	4,742,500	1,317,361	3,330,059	925,014	5,440,846	1,513,512		3,342,224
TOTAL	34,387,544	9,576,933	31,056,059	8,870,228	44,394,152	12,361,303	66,560,652	18,491,288	43,550,369	12,097,313	81,602,660	22,667,509	103,750,038	30,980,374
TOTAL U.S. UTILIZATION FOR JUICE		28,407,000		30,171,000		35,229,000		45,452,000		49,926,000		45,691,000		34,711,000 est
DOMESTIC & IMPORTED JUICE		35,933,933		39,041,228		47,590,303		63,943,208		62,023,313		68,358,408		65,811,376
% OF TOTAL UTILIZED COMING FROM IMPORTS		26%		22%		26%		29%		20%		33%		47.1%

SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

TOTAL VALUE OF APPLE JUICE CONCENTRATE
U.S. DOLLARS

	1977	1978	1979	1980	1981	1982
CANADA	723,325	607,180	567,983	672,514	1,395,956	1,746,284
AUSTRIA	228,061	230,090	1,230,024	1,303,626	598,448	3,522,043
BULGARIA	248,189	140,533				
FRANCE	1,381,233	1,270,090	7,427,614	4,333,058	1,449,649	2,319,052
GERMANY, WEST	56,404	58,948	887,950	2,632,434	5,148,107	12,517,460
ITALY	339,665	236,047	445,157	553,208	50,487	142,119
SPAIN	643,579	500,439	1,876,755	1,410,151	2,911,983	7,417,324
SWEDEN		14,064			299	
ARGENTINA	14,281,117	24,473,080	39,617,474	17,319,472	27,225,955	36,250,807
CHILE	16,033	726,621	646,075	330,354	1,508,033	2,082,783
MEXICO	315,434	392,758	930,528	990,832	2,831,238	2,839,929
AUSTRALIA	784,284	23,605		10,813	39,387	138,634
CHINA, MAIN	2,271	784	3,825	1,910		
ISRAEL	135,896	866,229	822,262	741,819	1,460,772	2,145,825
JAPAN	821			1,900		
NEW ZEALAND	437,606	691,473	385,429	370,944	2,045,947	2,802,472
SOUTH AFRICA	3,561,717	4,306,305	7,489,938	6,380,812	9,112,657	9,148,190
URUGUAY					325,261	
OTHERS	1,726,038	2,451,633	4,588,245	3,011,753	4,122,958	9,261,205
TOTAL	24,890,678	36,989,879	66,939,259	40,065,600	60,227,958	92,334,127

SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

Statement of Herbert E. Harris II, Counsel, Association of Food Industries Apple Juice Group

SUMMARY

The Association of Food Industries Apple Juice Group opposes H.R. 2711 for the following reasons:

It would result in administrative costs far in excess of the revenue it would generate;

It would legislate discriminatory treatment with respect to a particular product; and

It would unilaterally and prejudicially alter U.S. government policy and commitments with respect to our relations with foreign trading partners.

STATEMENT

Introduction

I am presenting the views of the Association of Food Industries Apple Juice Group, a non-profit group dedicated to the diverse interests of the international and the domestic apple juice trade.

We oppose H.R. 2711 for the following reasons:

First, it would result in administrative costs far in excess of the revenue it would generate; and

Second, it unfairly manipulates our trading concessions.

H.R. 2711 amends item 165.15 of the Tariff Schedules of the United States to impose a duty of one tenth of one cent per gallon on imports of apple and pear juice concentrate. The consequences of passing such a bill extend far beyond the mere imposition of a seemingly insignificant import duty. Rather, this legislation raised issues which impact greatly on U.S. relations with our trading partners.

The Purpose of H.R. 2711

H.R. 2711 is not designed to generate revenue. In the 1981-82 season, approximately 10,203,000 gallons of apple concentrate were imported into the United States. These importations entered free of duty. If the duty proposed by H.R. 2711 had been assessed, only $10,203 would have been collected. This minimal amount would most assuredly be exceeded by the costs of administering the tariff.

It is also important to recognize that a proposed duty of this magnitude would not deter importers from bringing apple concentrate into the United States. Since H.R. 2711 would impose a duty too small to generate income or to deter importations from all sources, one would expect to find some other purpose behind that legislation.

Further, free of duty treatment has been accorded this item since 1971 pursuant to a concession made by the United States in the Kennedy Round. Unilateral legislative action, such as that proposed in H.R. 2711, would, of course, impair that concession and be contrary to obligations under the General Agreement on Tariffs and Trade.

Unfair Manipulation of Trading Concessions

Careful analysis shows that, if passed, H.R. 2711 would have an adverse effect on our relations with important trading partners. Argentina, the country supplying over 40 percent of U.S. imports of apple juice concentrate, would perhaps bear the brunt of that impact.

The U.S. countervailing duty law provides that, where imports are the product of a country under the Agreement, or where they enter the United States free of duty, a countervailing duty may be imposed only if it is determined that those imports have caused material injury, or threaten to cause such injury, to the domestic industry. Argentina is not a "country under the Agreement." However, apple juice does enter the United States free of duty. Thus, a successful countervailing duty proceeding against Argentina, or any other similarily situated country, would have to be premised on an affirmative determination that the imports are injuring, or threatening to injure, the United States apple juice industry, as well as that bounties or grants actually are being received by the foreign producers.

H.R. 2711 would alter that procedure. By the imposition of a tariff, regardless how insignificant, countries such as Argentina would no longer be entitled to this injury test. In fact, these foreign producers would be an easy target for a domestic industry anxious to curtail its competitor. We submit that the imposition of the prejudicial tariff, such as that proposed in H.R. 2711, is in fact an attempt to circumvent established law with regard to important U.S. trading partners.

The imposition of a countervailing duty on the imports of one or more countries would, in turn, have an effect on the ability to satisfy increasing U.S. demand for apple beverages. In the period from 1978 to 1982, U.S. per capita consumption of apple juice increased by approximately one-third. During the same period of time, imported apple juice (derived from concentrate) held a relatively constant share of the growing U.S. market. Without the availability of imported concentrates from key source, the growing demand in the United States could not be met. Thus, a reduction in imports resulting from the imposition of a countervailing duty on a major foreign supplier would threaten the vitality and growth of the United States market for apple juice, particularly in times when domestic apples for processing are scarce.

Conclusion

It is clear that the duty proposed by H.R. 2711 is not designed to accomplish any of the normal purposes of a tariff increase. It would neither generate revenues which justify its administrative costs, nor equally deter all foreign imported juice concentrates. Rather, it would: (1) with respect to a particular product, legislate discriminatory treatment; and (2) unilaterally and prejudicially alter U.S. government policy and commitments with respect to our relations with foreign trading partners.

INTERNATIONAL APPLE INSTITUTE,
McLean, VA, March 19, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: The International Apple Institute (IAI) represents all segments of the country's apple industry. including approximately 10,000 growers through 26 affiliated state/regional organizations plus some 500 packing, shipping, sales and processing firms which handle upwards of 90 percent of all apples and apple products.

Our members have a vital interest in the overall, long-term welfare of the apple industry. We wish therefore, in response to the Subcommittee on Trade, Chairman Gibbon's March 12 announcement, to submit comments in support of H.R. 2711 which is designed to bring apple and pear juice in respect to tariff policies in line with other juice products.

Apple people, much like most of the fresh produce industry, as evidenced by the absence of government intervention, have a strong free market orientation. They are firm believers in the importance of maintaining the free enterprise system—a vital part of which is free trade, both domestic and international. An essential element of such trade is the absence of inequitable, unfair government intervention, which is the centerpiece of the problem being addressed by this legislation (H.R. 2711).

The apple industry's posture on the broad issue of imported apple juice is guided by the following two basic principles:

(1) Economic equity in the marketplace.
(2) Product qualtiy credibility in the marketplace.

The first principle, which relates to the legislation, will be discussed in more detail. The second principle is being pursued with the Federal Drug Administration (FDA) by encouraging the establishment of a Standard of Identity for apple juice concentrage based on quality, chemical residue, patulin and other adulterations and additives. The U.S. per capita consumption of apple juice has increased substantially (from 6.5 lbs. of fresh weight equivalent, to 11.0 lbs.) during the past five years. The maintenance of a quality product in the marketplace is important to the consumer and key to this favorable trend continuing.

We view this legislation (H.R. 2711) as the right step to achieving a reasonable degree of economic equity in the marketplace. Apple growers expect to compete with normal cost and profit margins, but cannot do so when government adds a significant subsidy factor. The USDA Foreign Agricultural Service has documented such a practice by the Argentine government in the form of rebates and low interest rate loans with liberal repayable schedules. The Economic Community (EC) Countries, some of which have become major apple juice exporters, also provide subsidies.

The following points dramatically illustrate the impact these subsidies are having on this country's apple industry, particularly the growers:

1. The quantity of imported apple juice has increased by 205 percent (45.9 million gallons, single strength, to 139.8 million gallons) during the past four years;

2. There has been a major shift from U.S. to foreign produced apples used for juice in the U.S. during the past 10 years, with the U.S. share decreasing from 77.3 percent in 1973, to 52.9 percent in 1982;

3. The percentage of the U.S. domestic apple crop used for juice, in the fyearsace of a dramatic increase in juice consumption, has remained relatively constant at 22-24 percent during the past four years, ranging from a high of 50.9 million bushels to a low of 42.2 million bushels, with the low being 1982, the most recent full crop year;

4. Argentina by a wide margin has consistently enjoyed a dominating share of the U.S. apple juice impsorting market, ranging from a low of 40 percent, to a high of 68 percent during the past five years.

We urge the Ways and Means Committee's favorable consideration of H.R. 2711. We believe doing so is in the public interest, by providing the small needed change necessary in the form of a countervailing duty to restore an economically equitable marketplace environment essential to the maintenance of the free market system which is important to the apple industry, as it is to all Americans. Hopefully, such equalizing action will result in the bilateral disappearance of subsidies and duties.

We are grateful for this opportunity to comment, and would welcome the change to respond to questions or provide additional information.

Sincerely,

JOHN J. MANDY, *President.*
DERL I. DERR, *Executive Vice President.*

H.R. 2776

Relating to the tariff treatment of gut imported for use in the manufacture of surgical sutures.

See also comments of American Farm Bureau Federation at p. 189.

STATEMENT OF HON. WILLIAM R. RATCHFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Gibbons, Members of the Subcommittee, I submit this testimony in support of H.R. 2776, I have introduced this bill on behalf of Davis & Geck, a division of Lederle Laboratories, American Cyanamid Company, a firm in my district.

Davis & Geck has been a quality manufacturer of surgical sutures since 1901. This firm manufactures surgical sutures under highly controlled environmental conditions. Surgical sutures manufactured from catgut strands are classified as absorbable sutures and as such, must meet stringent physical and biological standards as required by the U.S. Pharmacopeia and Good Manufacturing Practices for Medical Devices as regulated and enforced by the Food and Drug Administration.

The firm currently imports catgut, purified mammal collagan, from Australia for the manufacture of sutures. At present, to satisfy tariff classifications, the catgut is sterilized in Australia and then shipped to the United States. Sutures are again sterilized upon completion of the manufacuring process.

H.R. 2776, a tariff reclassification, would allow Davis & Geck to import unsterilized catgut and thereby utilize a new election beam method of sterilization upon completion of the manufacturing process. This new method of sterilization would increase tensile strenth, a necessary property in surgical sutures.

Davis & Geck is currently importing sterile catgut suture material lengths, classified in the TSUS 495.10 and dutiable at 6% ad valorem. However, non-sterile catgut suture material is classified in TSUS item 792.22 and dutiable at 12.4% ad valorem. Catgut currently imported by Davis & Geck can *not* be utilized by the racquet stringing industry—surgical catcut is cut to five foot lengths whereby racquet stringing catgut is cut to twenty foot minimum lengths.

H.R. 2776 would allow Davis & Geck to substantially improve product quality and have no significant revenue impact. I ask favorable consideration of this bill. Thank you.

Any questions regarding this legislation should be addressed to Pat Kery of my staff at 5-3822 or St. Clair Tweedie, Director, Government Relations, American Cyanamid Company at 789-1222.

H.R. 2851

Relating to the duty on certain knives (commonly known as snap blade tools) having movable blades.

No comments received on this bill.

H.R. 2947

To provide for the temporary suspension of duty on the importation of fluorspar.

STATEMENT OF HON. PAUL SIMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

H.R. 2947 should be rejected by the Ways and Means Committee for the following reasons:

1. *National Security.* Fluorspar is considered one of our most strategic minerals, necessary in the production of steel, aluminum, fissionable uranium, and all fluoride chemicals, including refrigerants.

The raw material independence of the U.S. requires that all sectors of the U.S. mining industry be strengthened, not weakened, or we will be moving to the status of a second class power.

There is no satisfactory substitute for fluorspar in its major metallurgical or chemical applications. A continuous supply of fluorspar is therefore necessary for the steel, aluminum, and chemical industries. It is vitally important that we insure a continued domestic supply of this mineral and not become totally dependent on imports. It is so strategically important that on March 13, 1981, when President Reagan announced the beginning of a major purchase program for the National Defense Stockpile, fluorspar was listed as a priority material to be acquired. Although funds were appropriated for the program in 1982, no fluorspar was added to nor deleted from the stockpile.

Currently, U.S. stockpile for metallurgical grade fall 76 percent short of the goal that has been set and acid grade fluorspar stockpiles fall 36 percent short of the goal. Thus, the actual supply of fluorspar for the national stockpile falls far short of the stockpile objectives.

2. *Domestic Employment Impact.* In 1946, approximately 5,000 people were employed in the U.S. fluospar industry. Today, according to the Bureau of Mines, only 300 people are employed in the industry. Increased import competition has closed down the marginal fluorspar producers and even some of the larger producers.

The District I represent accounts for well over 90 percent of all domestically produced fluorspar. In April, 1982, Inverness, one of the largest fluorspar mining operations in the country, stopped production from its mines and mill near Cave-In-Rock, Illinois. Approximately 180 persons lost their job as a result of this shut-down. The unemployment rate in Hardin county, home of Inverness, now stands at 20.8 percent, the second highest unemployment rate in Illinois.

According to management, Inverness was closed because of high mining costs and the high value of the dollar, making foreign investment economically attractive.

The Ozark-Mahoning Company, the Nation's largest fluorspar producer operates mines in both Pope and Hardin counties, Illinois. The operation employs 185 people. Should this mine shut down, unemployment in both counties would jump to about 35 percent. To the extent that a suspended duty diverts domestic purchasing of fluorspar from the United States to foreign producers, domestic employees in the fluorspar industry will be affected. But most importantly, the removal of the small margin of protection which the current duty supplies could easily dampen the considerable potential for expansion of the domestic fluorspar industry and the loss of considerable job possibilities.

3. *Impact on U.S. Reserves of Fluorspar.* There are estimated to be 50 million unmined short-tons of ore reserves in Tennessee and 35 million in Alaska. Idaho contains an additional 4 million short-tons and New Mexico another million. Fluorspar is also found in Colorado, Texas, Arizona, Montana, Nevada, and Utah.

Despite their very large deposits, neither Tennessee nor Alaska has reported any fluorspar production. The Bureau of Mines reports that most of the new U.S. fluorspar reserves discoveries were inspired by the 40 percent price increase that occurred from 1969 to 1974. Clearly, a decrease in prices brought about by suspension of duties would further contribute to the cutback in discovery and development.

4. *The current fluorspar duty involves only a minor cost burden to domestic purchasers of the material.* Although the current fluorspar duty provides some measure of protection to the domestic industry, it involves a miniscule addition to consumer's cost. The duty currently accounts for 0.059 percent of steel costs per ton. And the Bureau of Mines found that in 1983 the duty accounted for 0.037 percent of steel costs per ton.

5. *H.R. 2947 and the Multilateral Trade Negotiations.* H.R. 2947 would result in the United States making a unilateral concession on fluorspar, without receiving any reciprocal concessions from our trading partners. In general, tariff matters affecting U.S. products should be resolved in the Multilateral Trade Negotiations (MTN) in the General Agreement on Tariffs and Trade (GATT), when the United States can receive reciprocal concessions from our trading partners.

6. *A chief beneficiary of the duty suspension on fluorspar imports will be the Republic of South Africa.* South Africa is a major producer of fluorspar and one of the major exporters of fluorspar to the U.S. market. South Africa's enormous reserves produce more fluorspar than is needed in its domestic market; therefore, most of its production must be exported.

Ten years ago, South Africa accounted for only 0.2 percent of our imports. By 1974 that figure had risen to 23 percent of the market, and last year it gained 39 percent of the market, second only to Mexico. It is unwise for us to become increasingly dependent on a country with an official policy of racial segregation. I think a majority of Members of the House would agree with this, based on Bill Gray's amendment to the Export Administration Act last October 27, 1983, prohibiting new U.S. investments in South Africa. There were well over 218 Members firmly commit representing broad, bipartisan support. H.R. 2947 should be very carefully considered with regard to the benefits bestowed on South Africa, a country which United States foreign policy has been encouraging to change its racial policies.

New York, NY, *March 28, 1984.*

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Sir: I am writing this letter in opposition to H.R. 2947, a bill which would suspend the duty on the importation of fluorspar. This is a special interest bill which would provide temporary benefits to a few importers at the expense of Americans generally, both as consumers and as job-seekers.

The bill would further strangle the already beleagured fluorspar industry in this country, and would not make fluorine products one cent cheaper for consumers or provide one new American job.

Imports already account for over 85% of U.S. flourspar consumption. Nearly all of these imports come from Mexico, South Africa and China. Mexican supplies, while plentiful now, are not expected to last very long; and the U.S., which uses nearly a third of world production, is going to have to develop a fluorspar production capability of its own or be at the mercy of a handful of suppliers halfway across the world. Stamping out this production capability is hardly the way to go at this time. Maintaining a modest duty, on the other hand, would be entirely appropriate in the circumstances, and indeed is what the tariff laws are for.

The figures given by U.S. Bureau of Mines Bulletin 671 amply demonstrate the future need for a buoyant fluorspar industry in this country. The permanent interests of the American consumer will not be served by removal of a tariff which is scarcely a burden to the importers and barely enables the domestic industry to survive.

Let's keep our fluorspar production capability alive. We are soon going to need it badly.

Very truly yours,

John Lee Carroll.

STATEMENT OF E. I. DU PONT DE NEMOURS & CO.

E. I. du Pont de Nemours and Company, a Delaware corporation with offices located at 1007 Market Street, Wilmington, Delaware 19898, has imported fluorspar from Mexico and other sources for many years. The fluorspar which we import is a prime raw material used in the production of Hydrofluoric acid. Hydrofluoric acid is used in the production of refrigerants, fire extinguishing agents, solvents, blowing agents, propellants, plastic resins and textile products.

Imported fluorspar currently accounts for substantially all domestic consumption. Our periodic attempts to meet even a portion of our annual requirements from domestic sources have failed to such an extent that we no longer conduct the futile exercise of attempting to locate domestic sources of fluorspar. Furthermore, our own geologists have confirmed government survey reports that known domestic reserves are extremely limited and consist largely of low-grade ore.

In the production of hydrofluoric acid, it is essential that we use a grade of fluorspar described by industry as acid grade. The Tariff Schedules of the United States define acid grade fluorspar as containing over 97 percent of calcium fluoride. Such material is dutiable under Item 522.21 at the Most-Favored Nation (MFN) rate of $2.10 per long ton. Occasionally, however, we import fluorspar which has a calcium fluoride content of slightly less than 97 percent and is subject to a (MFN) duty rate of 13.5 percent ad valorem under Item 522.24 of the Tariff Schedules.

We also maintain that approval of legislation to suspend the current tariff on fluorspar is needed to correct an anomaly in the current U.S. Tariff Schedules. Importations of hydrofluoric acid into the United States are free of duty under Item 416.20 of the Tariff Schedules. Fluorspar, on the other hand, a necessary ingredient in the manufacture of hydrofluoric acid, is dutiable. As a consequence, the existing duty structure strongly favors the location of new hydrofluoric acid investments outside the United States.

In conclusion, fluorspar is essential to the continuation of a vital industry with a substantial employment level and we are unable to meet even a small portion of our requirements from domestic sources. We therefore urge approval of H.R. 2947 which will suspend the current import duty provided therefor in Items 522.21 and 522.24 of the Tariff Schedules of the United States.

STATEMENT OF GILL MONTGOMERY, CONSULTING ENGINEER, ON BEHALF OF HASTIE MINING CO. AND THE MINERALS EXPLORATION CO.

I am a graduate mining geologist and mining engineer, BS in both, University of Missouri at Rolla, Class of '34.

For most of my working life, since 1941, I have been connected with the domestic fluorspar industry in Illinois and Kentucky. From 1941 until 1975 I was engaged in fluorspar exploration and mine development, including opening the largest fluorspar orebody that has been found in the U.S., near Cave in Rock, Ill. From 1952 until 1975, when our company was sold to Allied Chemical Corp., the largest fluorspar consumer in the U.S., I was general manager and vice president of the Fluorspar mining division of Minerva Oil Co. During these years our company was second only to the Ozark-Mahoning Co. in the production of acid, ceramic and metallurgical grades of fluorspar concentrates, plus co-products of zinc, lead and barite. We operated five underground mines and two flotation mills.

I am well acquainted with the U.S. fluorspar ore reserve situation, and all of the mining and milling methods used in production. We counted some 80 consumers of fluorspar as customers, shipping by river barge, rail and truck.

Since 1975, I have worked as a mining and geological consultant in fluorspar and related minerals. I have become acquainted with most of the fluorspar operations and ore reserves of the U.S., and am aware of thier large potential. I have also travelled extensively to study the principal fluorspar producing areas of the world, including Mexico, South Africa, Italy, Spain, France and England.

Several years ago the President became concerned about the danger of relying for strategic minerals on areas of the world where there was a political risk potential, or where supplies could be interrupted in case of war. He caused to be set up the Minerals Availability System (MAS) to be administered by the U.S. Bureau of Mines, the study to cover all strategic minerals over 50 percent of which had to be imported in fulfilling U.S. essential requirements. Fluorspar was certainly included because the U.S. now imports over 85% of the fluorspar it consumes. Most of it comes from Mexico, China and South Africa, all nations where unstable conditions may occur near term. The MAS findings are available to guide policy making in such matters as stockpiling of strategic minerals, tariff protection of domestic mineral production, and promotion of self sufficiency in production of strategic minerals.

In 1982 and 1983 I was part of a team of geologists and engineers that travelled in Mexico, South Africa, Namibia, Kenya, China, Thailand, Morocco, Tunisia, Italy, Spain, France and England, evaluating and studying fluorspar reserves and production capabilities and mineral economics of the producers in those areas. That information is in preparation by the U.S. Bureau of Mines.

Although there are impressive foreign reserves and mining costs at open pit mining operations that cannot be matched in the US, the proximity of the ore reserves in the Ohio river valley to several major consumer plants goes far to offset the foreign advantage given the moderate tariff protection that now exists. Some of the largest US reserves are in western states, where the reserves are still at a disadvantage because of the high rail freight rates.

A rather common misconception has been circulated by short-sighted consumer interests seeking to abolish the fluorspar tariffs is the need for the two-level tariff. One for the so-called acid grade, being grades of 97.0% CaF_2 or better, and all grades below that level. The tariff on acid grade for many years has been $1.87½ per short ton, while the tariff on all flourspar of less than 97.0% CaF_2 purity, and mistakenly called "metallurgical grade", bears a tariff of 13½% ad valorum. Until recently the tariff on grades of less than 97.0% CaF_2 was $7.50 per short ton.

This unbalanced tariff application, where the higher grade bears the much lower tariff rate, dates from days during World War II when very little acid grade could be produced in the US, because mills had not yet been constructed capable of making acid grade flotation concentrate, not because of any ore reserve shortage.

Much of the acid grade material now being imported is being processed into briguettes for the US steel industry, and for numerous ceramic and flux uses, where lower grades of fluorspar formerly sufficed. But for these uses the foreign acid grade material is cheaper on a cost per fluoride unit base. (A fluoride unit is 1% in ore or 20 lbs. contained in a short ton of 2000 lbs.) Actually, the chemical industry can and does use 96.% CaF_2 grade, but naturally will buy foreign 97% grade because of the low tariff on the higher grade.

I strongly urge that you oppose consideration of HR 2947 because it is not in the best interest of national security as regards safe sources of this strategic mineral.

It also damages chances for a revival of a domestic fluorspar industry in those areas of Illinois and Kentucky which presently suffer severe unemployment, and where fluorspar mining for many years was the principal industry.

My I assure you that an unpredjudiced study of domestic ore reserves shows that sufficient reserves have already been discovered by drilling that if put into production could more that half way meet the nation's needs, and at selling prices competitive with world prices on a delivered basis in normal times.

When demand rises to permit price increases that will offset high rail freight costs from several western states, where proven ore reserves are known, much additional domestic production can be forthcoming.

WASHINGTON, DC, *March 30, 1984.*

Hon. SAM M. GIBBONS,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. GIBBONS: The Mexican Fluorspar Institute is a Mexican trade association made up of all the producers of fluorspar in Mexico. I am legal counsel to the Institute in the United States.

In response to your press release of March 12, 1984, the Institute would like to state that it supports H.. 2947 and would like the opportunity at a later date to present detailed information and oral testimony, if necessary, to the Subcommittee.

In brief, the duty on fluorspar (TSUS 522.21 and 522.24) is both very high and anomolous. The higher the percent of calcium fluoride in the product (the more highly refined it is) the lower the effective rate of duty. Hydrofluoric acid—the most highly refined form of fluorspar traded in quantity—is duty free (TSUS 416.20).

Moreover, this long-standing, inverse pattern of high duties cannot be related to present conditions in the domestic industry. There is little domestic production other than captive production, and the United States is almost entirely dependent on imports.

The Mexican fluorspar industry is in severe recession and important mines are closing. Suspension of the duty on fluorspar would be of value in reducing costs to the steel, aluminum and chemical industry—the principal consumers of fluorspar—and modestly stimulating to consumption of fluorspar.

The Institute would like to present further written and oral evidence on H.R. 2947 at an appropriate time.

Sincerely yours,

W.N. HARRELL SMITH,
Attorney for Mexican Fluorspar Institute.

MOODIE MINERALS EXPLORATION CO.,
Kuttawa, KY, March 30, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth Building, Washington, DC.

DEAR MR. SALMON: The following statement was prepared by Boyce Moodie, III, on behalf of himself. Address as follows: Boyce Moodie III Minerals, Route #1 Bend of Rivers, Kuttawa, Kentucky 42055.

Mr. Moodie is a geologist and past manager of Frontier Spar Corporation. He presently operates his own exploration company actively engaged in the exploration for various minerals. His family has been involved in the production of fluorspar from Kentucky for over ninety years. He is the fourth generation in the business.

SUMMARY

I request you defeat HR 2947. I have worked diligently with the legislators of Kentucky for the removal of the 4½% severance tax of fluorspar and I am delighted to say that Governor Collins signed HB 93 today. Which permanently removes the tax. The industry has been given a shot in the arm. It would be counter productive to the efforts of our state if you allow HR 2947 to pass.

Please Defeat H.R. 2947.

Sincerely,

BOYCE MOODIE III.

Attachments.

[From the Paducah (KY) Sun, Feb. 3, 1984]

REOPENING OF FLUORSPAR MINE MAY DEPEND ON LEGISLATURE

(By Bill Bartleman)

FRANKFORT, KY.—Fluorspar minning could again become a major industry for Livingston and Crittenden counties if the Kentucky General Assembly repeals a 4.5 percent severance tax on fluorspar, zinc, lead and barite.

Boyce Moodie of Kuttawa, whose family has been involved in the mineral business in western Kentucky since 1876, said lifting the tax would help him put together a $2 million package to buy equipment to reopen a Crittenden County mining operation shut down in 1979. Fluorspar is used in the production of steel and aluminum, and in the atomic industry among other purposes. Most fluorspar used in the U.S. is imported from Mexico.

Moodie said that because of competition, the 4.5 percent tax is keeping investors out of Kentucky. He said mining is done in Illinois, where there is no such tax.

Reopening one mine eventually would provide about 100 jobs for residents of Crittenden, Livingston, Lyon and Caldwell counties, according to Moodie, who added that salaries and other operating expenses would pump about $500,000 a month into the local economy.

Rep. Joel Ellington, D-Paducah, whose district includes Livingston County and most of Crittenden, has introduced a bill removing the severance tax from fluorspar, lead, zinc and barite—all of which come from a fluorspar mine.

Moodie and representatives of several firms interested in providing financial support for the project met privately three weeks ago with key members of the House Appropriations and Revenue Committee.

Rep. Ramsey Morris, D-Hopkinsville, vice chairman of the committee said no fluorspar mining is done in the state now, so lifting the tax would not reduce state revenues.

"I see where it is going to be an economic benefit to repeal it," Morris said, adding that he intends to co-sponsor Ellington's bill. Morris said he hopes to meet with Gov. Martha Layne Collins next week to discuss it.

Moodie said he has negotiated the purchase of a milling machine, located at the old Frontier Mine in Crittenden County, from U.S. Steel for about $1 million. He said a new one would cost about $9 million.

The milling machine hasn't been used since the mine closed in 1979, but he said it is in excellent condition.

Moodie opened the Frontier Mine in 1969, and later sold it to company purchased by U.S. Steel. He continued as the mine's general manager until it was closed.

Moodie said if he isn't able to put together a deal soon to purchase the mill, he fears U.S. Steel will dismantle it and move it. "If that happens, it's going to be 10 to 20 years before anyone could afford . . . . to start from scratch," he said.

One potential customer for fluorspar is the Pennwalt plant at Calvert City. Pennwalt uses fluorspar in the production of hydrochloric acid. At one time, Moodie said, his mine provided the company with 30 to 40 percent of its fluorspar requirements.

Pennwalt operates its own mines in Illinois, but Moodie said he may be able to provide fluorspar at a lower total cost because of the proximity of his mine to the plant.

Moodie said one firm interested in backing him is Reynolds Aluminum, owner of mineral rights to about 10,000 acres of land in western Kentucky.

Fluorspar and the other minerals are extracted in deep-mining operations, from depths of 700 to 800 feet, Moodie said.

Moodie said that until World War II, Kentucky was the nation's top fluorspar-producing state. He said 2,000 people were employed in mines in the Livingston-Crittenden County area.

However, competition from Mexico eventually took over the market.

Moodie said his family has been involved in the mineral business in western Kentucky since 1876, when his great-grandfather, Francis Berrian Moodie, began buying and selling minerals.

[From the Paducah (KY) Sun, Mar. 25, 1984]

MINERALS TAX RELIEF BILL AWAITS GOVERNOR'S PEN

FRANKFORT, KY.—A bill to provide tax relief for minerals mined in Livingston and Crittenden counties was approved by the House Friday and sent to the governor.

The bill ran into problems earlier in the week when the House refused to agree to a Senate amendment to exempt out-of-state limestone sales made by two quarries—Reed Crushed Stone and Three Rivers Rock—in Livingston County.

However, supporters of the amendment, led by Rep. Lloyd Clapp of Wingo, used a parliamentary procedure to maneuver the bill back to the floor for consideration. After lengthy debate Friday, the House voted 48-41 to concur in the amendment and then repassed the bill 54-32.

The bill, introduced by Rep. Joel Ellington of Paducah, also exempts fluorspare, lead zinc, tar sand and barite from the 4½ percent mineral severence tax. Those minerals are not now mined in Kentucky. Ellington said the tax break could result in the reopening of mines in Livingston and Crittenden counties and the creation of several hundred new jobs.

Opponents of the limestone amendment said its passage would cause the state to lose severance tax revenue now being paid by those two quarries.

Rep. J.R. Gray of Benton, however, said the quarries have been losing their share of out-of-state limestone sales to firms from states which do not have the tax. He ssaid one of the quarries in Livingston County has lost 69 jobs because of reduced sales.

HB 93 was signed by the Governor on March 30, 1984.

STATEMENT OF B.L. PERRY, VICE PRESIDENT, MINING DIVISION, OZARK-MAHONING CO.

The Ozark-Mahoning Company, a subsidiary of Pennwalt Corporation, through its Mining Division in Rosiclare, Illinois, has been a Flurospar producer since 1939. During most of these years, the Company was the United States' largest domestic producer. Ozark-Mahoning is currently the only remaining domestic producer of acid and ceramic grade fluorspar.

SUMMARY

I respectfully request that our opposition to H.R. 2947 (To Provide for the Temporary Suspension of Duty on the importation of Flurspar) be entered as testimony in the forthcoming hearings on the above mentioned Bill.

Our opposition to H.R. 2947 is based upon the following:

(a) The economic impact, resulting from the passage of H.R. 2947, would jeopardize the existence of a small but vital domestic industry.

(b) An elimination of the remaining domestic production would place the United States entirely dependent upon foreign imports for a large volume strategic material.

(c) The total elimination of domestic production opens the door for aggressive foreign market manipulation and more severe trade deficits.

(d) The termination of domestic fluorsper mining operations in Southern Illinois would exacerbate an already serious local unemployment problem.

SUPPORTING STATEMENT

Since the year 1939, when the Ozark-Mahoning Company explored and developed mines in Southern Illinois, they have remained a continuous and reliable source of flurspar.

In spite of ever present foreign competition from Spain, France, Italy, Mexico, South Africa and China, Ozark-Mahoning's operations have remained economically viable until the recent entry of Chinese fluorspar into the U.S. market.

The resulting recent price decreases fomented by the importation of large quantities of low priced fluorspar from China has not only jeopardized the domestic industry but has likewise been very damaging to the Mexican Fluorspar producers. This is mentioned because the strategic nature of fluorspar dictates that high priority should be placed upon a stable source during an emergency period. Mexico is obviously our most secure source, second only to our own domestic production.

It seems a most inopportune time to consider the removal of a tariff that will most likely be fatal to our own domestic industry, and reward those social and political actions are offensive to our government's rhetoric and desires; namely China and South Africa.

The proponents and supporters of H.R. 2947 have honestly and sincerely stated two reasons for their support of the Bill. These reasons are: (1) They wish to help the hard pressed domestic steel industry obtain cheaper raw materials. (2) They are proponents of free trade.

With regard to the domestic steel situation; it should be understood that the average fluorspar consumption is approximately five pounds of fluorspar per ton of steel produced. Under current pricing and tariff rates, this equates to between three and four cents per ton of steel for total tariff cost. It is hardly necessary to state that this insignificant amount cannot affect the competitive position of the domestic steel industry.

It hardly seems fair or logical to sacrifice an industry which currently produces approximately 10 percent of our Country's needs of a strategically vital industrial mineral, for no real benefit to any group.

To those who are supporting H.R. 2947 because of their advocacy to free trade, we must honestly reply that we likewise believe in the theory of free trade, if in fact it is truly free trade.

Our current fluorspar market structure, particularly as it applies to China, does not resemble a free trade arrangement. It would appear that the government of China has a need for dollars and the true cost for obtaining these dollars is of secondary importance.

It is normal for the crude ore production rate in many Chinese mines to be as low as one ton per man shift, while in our domestic mines, a rate of 30 tons per man shift is not unusual. In addition, the Chinese are transporting this material half way around the world and yet delivering it at considerably lower prices than a break-even rate for the most efficient domestic operator.

It is obvious, with such disparity in efficiency between U.S. and Chinese mines, China either subsidizes the losses in their fluorspar industry or they are flagrantly exploiting their workmen. In neither case should this be viewed as free trade.

With regard to Ozark-Mahoning's view of H.R. 2947, it is almost a certainty that passage of this Bill would result in the loss of one fourth to one third of our sales. This loss will occur in the ceramic-grade area, i.e., material assaying between 85 to 96 percent fluorspar. The reduction of 13.5 per cent in pricing (current tariff rate) would make us non-competitive.

A resulting loss of 25 to 30 per cent of present sales would ultimately increase unit costs on the remaining production to the point of being non-economic.

It has been calculated that the closure of our operation in Hardin County Illinois would result in an unemployment rate of approximately 34 per cent.

Based upon the foregoing statement, presented as testimony for hearings on H.R. 2947, we respectfully request that all facts be fully considered and that bill H.R. 2947 be defeated in subcommittee.

HEROD, IL, *March 26, 1984.*

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: Attached is my testimony on H.R. 2947. The statement is being submitted on my own behalf as a geologist employed in mineral exploration.

I recommend H.R. 2947 be rejected for the following reasons:

1. It will harm present domestic producers and potential producers who are now closed down because of the adverse economy.
2. Domestic producers are trying to compete with very cheap foreign labor which is paid rates that would be unacceptable and illegal in the U.S.
3. The present duty has no significant impact on the consumer.
4. A viable domestic industry is presently vital to national security and due to the myriad of new compounds utilizing fluorine which are being developed, it may be significantly more vital in the future.

With best regards,
Sincerely,

JOSEPH A. PORTER.

STATEMENT OF JOSEPH A. PORTER

H.R. 2947, providing for the suspension of the U.S. tariff on fluorspar should be rejected by the House Ways and Means Committee. I submit the following reasons.

1. *Passage of H.R. 2947 will constitute a serious threat to the survival of the nearly extinct domestic fluorspar industry.* It will not only harm existing producers but will greatly discourage the re-opening of existing mining and milling facilities which are shut down, and discourage future investment in exploration and development.

Although the current duty on acid grade fluorspar is so low that it affords no protection, the loss of the tariff on sub-acid grade (−97% CaF_2) concentrates would be very damaging to the domestic industry. In the course of making acid grade fluorspar by flotation, both domestic and foreign producers make a certain amount of sub-acid grade products. The amounts of sub-acid grade produced depends somewhat on the character of the ores and the efficiency of the mills.

The sub-acid grade concentrates are marketed by the domestic producers for uses in the ceramic and other industries and as feed for metallurgical briquettes which substitute for metallurgical lump fluorspar. An economically viable market for sub-acid grade products is necessary for the domestic industry to survive or be revitalized. Suspension of the duty will lower prices in this market to such an extent that domestic producers will no longer be able to compete.

Some of the sub-acid grade produced by the foreign producers is blended with higher than 97% CaF_2 acid grade. The rest of it is sold if possible or stockpiled. This has resulted in foreign producers holding large stockpiles of sub-acid grade. If the tariff is suspended, this material will immediately be a flood on the market place at very low prices. The result will be long term damage to the beleaguered domestic industry and only short term benefit to consumers.

2. *Suspension of the tariff will significantly reduce the domestic industry's ability to compete with cheap foreign labor.* Cheap foreign labor is one of the primary reasons that jobs in the domestic industry have declined from 5,000 in 1946 to 300 in 1983. It is not so much that U.S. wages are too high, but that wages in the competing countries are too low. All of the foreign producers utilize cheap labor. Most of the fluorspar imported into this country is produced by labor which is paid substantially less than the legal U.S. minimum.

The domestic fluorspar industry has been in a decline for years. As a consequence wages have tended to lag behind the rest of the U.S. The average wage is now about $12 per hour, including fringe benefits. This is substantially less than other segments of the U.S. mining and manufacturing industries.

In sharp contrast are the wages paid in the competing countries. Mexico furnishes 62 percent of the U.S. imports. Mexican labor is paid the equivalent of $2.50 to $3.00 per hour. Exports from the People's Republic of China are making entries in the U.S. and world markets at very low prices. Chinese miners earn about the equivalent of $1.10 per day. The total labor cost of Chinese concentrate is probably about $3.50 to $4.00 per ton.

South African producers have two advantages over domestic producers in terms of labor costs. Their basic rates are lower. They vary between $2.00 and $4.00 per hour for ordinary labor and $5.00 to $6.00 for higher skills (does not include fringe benefits). In addition, their labor costs are lower because they produce from relatively new, modern, highly mechanized, large volume open pit mining operations.

Utilizing labor at rates comparable to those available to the foreign producers would not only be socially unacceptable but would also be illegal in this country.

3. *The tariff's cost is insignificant.* According to figures published by the U.S. Bureau of Mines, steel requires 2 to 20 pounds of fluorspar per ton of steel produced. The average requirement is 6.5 pounds. A duty of $11.00 per ton of metallurgical grade fluorspar (containing 70 percent effective CaF_2, or 1400 pounds) would amount to 0.8¢ per pound. The cost of the duty per ton of steel produced would range from 1.6¢ to 16¢ and average 5.2¢.

The duty on acid grade fluorspar is of similarly little significance. The manufacture of 1 ton of anhydrous hydrofluoric acid requires approximately 2.2 short tons of acid grade fluorspar. The duty on the 2.2 short tons amounts to $4.11. This amounts to 0.2¢ per pound for the HF which is priced at approximately $0.72 per pound.

These costs are a small price to pay to maintain the vital domestic fluorspar industry and the jobs it furnishes.

4. *A domestic fluorspar industry is vital for national security.* Because of its present and future strategic significance, it is in the nation's best interests to have a viable domestic industry. The passage of H.R. 2947 will hasten this industry's demise.

There is a large volume of literature attesting to the traditional strategic uses of fluorspar. However, there has been little consideration given to the future. Fluorine chemists are currently developing many new materials which will have significant strategic application. As we move further down the road to even higher technology, the number of strategic materials derived from fluorine will undoubtedly increase substantially.

A detailed study of the multitudes of new materials, both developed and undeveloped, should be made to assess the future strategic importance of fluorspar. This should be done (possibly by the U.S. Bureau of Mines) before H.R. 2947 is considered. It could also serve to structure a fair tariff for all fluorspar products.

SEAFORTH MINERAL & ORE CO., INC.,
Cleveland, OH, March 20, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: This company, the second largest producer of fluorspar in the United States, does not feel the present import duty on fluorspar helps our industry and, therefore, should be eliminated.

The duty on acid grade of approximately $1.88 per short ton is about 1.14 percent of the selling price of dried commercial fluorspar.

The duty on less than 97 percent CaF_2, of 13½ percent ad volorum is a function of the value at the shipping point and can be as low as $8.00 a ton.

During the past two and one half years the selling price of foreign acid grade fluorspar has dropped $45.00 a short ton and there is no way an import duty can match this rate. This price reduction is a result of the high value of the dollar, lower ocean rates and the general low world economy which makes the U.S. a more attractive market.

The present duties, unfortunately, are illusionary and do not help our industry. In 1984, 92–95 percent of all fluorspar consumed in the United States will be imported. If we eliminate the captive market tonnage consumed by parent companies the rate of imports would be 98 percent of total consumption. There might be only 10,000 to 20,000 tons of all grades of fluorspar sold to commercial industries in the U.S.

Our mining industry in unfairly penalized by both federal and state taxes that total many times the present U.S. duty on imported ore. In Illinois, our Workmen's Compensation tax was 14.33 percent because we are a mining company. In 1981, we paid Workmen's Compensation Insurance in the amount of $260,000, compared to our actual cost of $22–23,000 for out of pocket expenses. Also, in Illinois, mining companies are assessed 4½ percent "use" tax on supply and equipment purchases whereas manufacturing companies are free of this tax. Having variable employment, we also pay the highest unemployment compensation taxation.

Based on the above, in place of the present duty, I would suggest a subsidy to U.S. mining companies that sell fluorspar commercially or for export. The subsidy should be variable using a base of the currencies of Mexico, South Africa, Spain and Italy, the major foreign importers of fluorspar. The tonnage that could be sold commercially would be in the range of 50-100,000 short tons.

John Naisluth of "Megatrends", does not believe in subsidizing but then he doesn't know about the repressive taxes we pay nor how we have become the whipping boys of the Environmental Protection Agency.

I have never believed in subsidizing an industry, however, if we credit income taxes paid by working personnel, taxes on purchases, plus all other taxes including real estate, they would more than make up the subsidy. Any profits, of course, would be taxed. Being a variable rate, the subsidy would be reduced as the dollar weakened.

Import duties as they presently are set, are not a protection to U.S. fluorspar industry and we are kidding ourselves if we believe that.

Very truly yours,

JOHN MCCLURG, *President.*

[Attachment retained in subcommittee files.]

H.R. 3158

To implement the Customs Convention on Containers, 1972.
No comments received on this bill.

H.R. 3159

To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

ABE M. KNIPPER, INC.,
Inwood, NY, April 20, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: We would like to express our concern about H.R. 3159, a bill to assess interest on duty payments. Is there a provision in this bill for protesting the interest payments on billing errors?

The bills are generated on a consumption entry number and an importer of record number. Importers and Custom brokers affix that number on all entries. If for some reason, a Customs employee in data processing inputs the wrong I.R.S. number (by transposing numbers or omitting suffixes), the bill would be sent to the wrong importer. Would it be right for this importer to pay interest on a bill which clearly does not belong to him?

On many occasions, U.S. Customs Services issues bills for additional duty because some documents, (i.e., certificate of origin, Form A) are missing at the time of liquidation. Quite often when these bills have been issued, brokers and importers elect to protest instead of paying. The protest usually provide receipts, indicating that these documents have been presented to Customs. Again, should importers pay interest on a bill which should not have been rendered?

Another case in point, it has happened in the past, where the incorrect importer number has been affixed to formal entries. When the bills are rendered to the wrong party, the party wants to have the bill cancelled because they cannot match it up with any of their records. It can take upwards of 30 to 60 days to have a bill of this nature corrected. Again, should the importer be required to pay interest on an unjustified bill?

There are provisions in Code 19 Federal Regulations for Customs to demand payment from Surety. If the object of the bill is to speed up collections, then Customs should demand sureties to pay faster. Otherwise, what purpose are the sureties serving?

Conversely, are there any provisions in this bill which proposes to pay interest on refunds (including countervailing duties), which can be held by Customs three years or more?

Is this bill intended to dissuade or deter imports, improve the trade deficit, or is this a bill to balance the budget? We would hope that the committee would address and respond to the aforementioned questions, in order that we could advise our importing clients accordingly.

Sincerely yours,

MICHAEL VENY, *Vice President.*

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS,
New York, NY, March 27, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: This refers to the request for written comment's on certain tariff and trade bills as announced in the Trade Subcommittee's Press Release #29, dated March 12, 1984. Included in the announcement is H.R. 3159. H.R. 3159 would amend section 505 of the Tariff Act of 1930, 19 U.S.C. § 1505, to require that increased Customs duties determined to be due upon liquidation or reliquidation are payable immediately. Additional duties not paid within 25 days of liquidation would accrue interest penalties. At present such additional duties are not payable until 90 days of after liquidation, unless a protest is filed in which case payment may be delayed until 180 days after the protest is denied.

The American Association of Exporters and Importers reemphasizes its opposition to H.R. 3159. In the statement submitted November 22, 1983 we strongly supported the *status quo*. That position has not changed in the intervening months. If anything, AAEI, in concert with other interested representatives of the private sector, is even more firmly opposed to H.R. 3159.

As we noted last year, the legislation is unnecessary to resolve any difficulties faced by the Customs Service, is fundamentally inequitable, and would work a serious and unnecessary hardship on importers, many of which are small businesses. For these reasons we urge that H.R. 3159 be tabled.

AAEI appreciates the opportunity to comment on this issue.

Sincerely,

EUGENE J. MILOSH, *President.*

AMERICAN BAR ASSOCIATION,
SECTION OF ADMINISTRATIVE LAW,
Chicago, IL, March 21, 1984.

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: The Section of Administrative Law submits the annexed statement as its comments relating to H.R. 3159, a bill to require that additional customs duties are due and payable immediately upon a liquidation or reliquidation. I am authorized to state that the ABA's Standing Committee on Customs Law fully supports our views.

We recommend an intermediate position with respect to the required payment date between that called for in the bill and the lengthy delay in payment that is available in accordance with present law under the *Heraeus-Amersil* case (paragraphs 1-2, p. 6 of our statement). Related comments on other provisions of the bill are also set forth in our statement (paragraphs 3-8, pp. 6-7). We would be pleased to further amplify our views if that would be helpful to the Subcommittee on Trade or the full Committee.

The views set forth in our statement are being presented only on behalf of the Section of Administrative Law (with the support of the Standing Committee on Customs Law, as noted above), and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly they should not be construed as representing the position of the ABA.

Sincerely,

MARTIN F. RICHMAN,
Section Chairman.

STATEMENT OF THE AMERICAN BAR ASSOCIATION, SECTION OF ADMINISTRATIVE LAW

INTRODUCTION

H.R. 3159 is a bill to require that customs duties finally determined by the United States Customs Service to be due upon a liquidation of a customs entry for merchandise imported into the United States are due upon that date. An entry is "liquidated" when Customs has finally computed and ascertained the duties due with respect to a particular Customs entry. A reliquidation may take place when it is found necessary to correct or revise a liquidation for some reason. A notice of liquidation or reliquidation is issued by Customs for the information of those concerned.

The bill is an Administration bill drafted in the Department of the Treasury, which was introduced by request in the House of Representatives by Chairman Sam Gibbons of the Trade Subcommittee of the Committee on Ways and Means. It is now before that Subcommittee for consideration.

WHAT THE BILL WOULD DO

Section 1(a) of H.R. 3159, if enacted, would add a new subsection at the end section 505 of the Tariff Act of 1930, as amended (19 U.S.C. 1505), to provide that duties determined to be due upon liquidation or reliquidation are due upon that date. If payment is not received by the appropriate customs officer within 25 days after that date, the bill provides the duties owed would be considered delinquent. Interest on the delinquent amount would be payable from that date at a rate determined by the Secretary of the Treasury.

Under section 1(b) of the bill, for amounts determined to be due in liquidations or reliquidations made before the effective date 30 days after the date of enactment and then remaining unpaid, the 25-day limit for payment would begin to run on that effective date.

Section 2 of the bill would also add a new subsection at the end of section 520 of the Tariff Act of 1930, as amended (19 U.S.C. 1520), authorizing the payment of interest on any increased or additional duties paid, over and above the estimated customs duties deposited at the time of entry, calculated from the date of refund or the date of the filing of a summons under 28 U.S.C. 2632 in the Court of International Trade.

THE PRESENT LAW AND REGULATION

Until the decision of the Court of International Trade was affirmed by the U.S. Court of Customs and Patent Appeals in the case of *Heraeus-Amersil, Inc.* v. *United States* 671 F.2d 1356 (1982), the Customs Service had based its debt collection responsibilities upon the regulatory provision (19 C.F.R. 24.3(e)) that a bill for duties, taxes, or other charges is due and payable upon receipt thereof by the debtor. However, the courts in *Heraeus* decided that increased duties determined on liquidation are not due and payable by the importer until either the protest period of 90 days from liquidation has expired without a protest having been filed (19 U.S.C. 1514) or, if filed and denied, until the 180-day period to appeal the denial to the Court of International Trade as provided in 28 U.S.C. 2636 has expired.

THE PRESENT ADMINISTRATIVE PROCEDURES

Entry. All commercial shipments of merchandise to the United States are required to be entered through Customs to determine whether the merchandise is subject to the payment of duties, taxes, fees, or other charges, and, if so, the proper amount of such charges. At the same time, estimated duties and a bond guaranteeing payment of all charges are required to be deposited and posted. Upon presentation, the Customs officer reviews the entry before acceptance to determine whether the entries are routinely accepted as presented but if the Customs officer has reason to believe that the merchandise is incorrectly described or valued he may reject the entry and require that it be presented again in a form which is acceptable to him. If the importer or his broker should decline to make the entry in the form prescribed, the goods will not be released from Customs custody for use by the importer and storage charges may accrue. Thus it is, practically speaking, the Customs officer and not the importer or his customs broker who determines the description and value of the imported object to be given in the Customs entry.

Liquidation and billing. When the Customs officer has determined finally the correct description or "classification" and the valuation of the imported merchandise, the rate of duty is found in the Tariff Schedules of the United States (19 U.S.C. 1202), the amount of duty due is calculated, and a notice of liquidation is issued. At the same time, a separate bill for any increased or additional duties or taxes which may have been found to be due is prepared and sent to the importer of the merchandise or the importer's customs broker. If the bill is not paid within 30 days, two additional bills are sent out at 30-day intervals. In due course, the surety on the bond required to be filed with each Customs entry is notified. At that time, if the bill still remains unpaid, the bonding company must pay the claimed amount in order to avoid a possibility of being found delinquent and ultimately removed from the list of sureties recognized as approved bondsmen by the Department of the Treasury. The surety, then, is left to deal with the importer and effect collection of the amount the surety has been compelled to pay on behalf of the importer to Customs. Payment thus may be delayed many days beyond the date of the first billing to the importer. No interest is charged on such a delayed payment.

THE COURT DECISION

Under the *Heraeus-Amersil* decision, supra, the payment of the amount over and above the amount deposited with the entry incident to the arrival of the merchandise in the United States is not due at the time of liquidation or at the time of the receipt of the bill for additional duties. Further, it is not due at the end of the 90 days allowed for filing a protest against the liquidation and, assuming a protest is timely filed, it is not required to be paid or deposited during the period when Customs is considering action on the protest, an indeterminable period of time. It is not required to be paid or deposited at the time of denial of the protest or during the succeeding 180-day period allowed for the commencement of an action in the Court of International Trade. It must however be paid to Customs on or before the filing of a summons or a summons and complaint commencing an action in that Court. If it is not paid at that time, the action will be dismissed with prejudice upon motion alleging the non-payment.

The only change in the system described above which would be effected if H.R. 3159 should be enacted would be that the unpaid amounts of duty determined to be due upon liquidation or reliquidation would be due on the date of such liquidation or reliquidation. If that payment has not been received by Customs within 25 days after that date, interest at a rate determined by the Secretary of the Treasury to be applicable is to be assessed on the amount unpaid.

If H.R. 3159 is amended as proposed in the suggestion put forward by the Section of Administrative Law, the amounts billed for increased or additional duties and taxes will be due on the date that a protest filed against a liquidation or reliquidation of any entry has been denied, or, if no protest has been filed, on the date that the period to file such a protest has expired. If that payment has not been received by Customs within 30 days after the applicable day, interest is to be assessed in the same manner as now provided in H.R. 3159.

THE DATES FOR PAYMENT COMPARED

The approximate dates on which payment would be required under the applicable requirements (1) before the date of the decision in *Heraeus-Amersil;* (2) after that date; (3) under H.R. 3159; and (4) under the proposal approved by the Council of the ABA Section of Administrative Law are set out below. Those calculations have been based upon the following assumptions:

(1) A uniform liquidation date of April 1, 1983; (2) in each case when applicable the importer's protest was filed on the last day of the statutory period for such filing; (3) a uniform period for consideration by customs of 60 days before denial; (4) in each case when applicable, the summons or a summons and complaint was filed in the Court of International Trade on the last day permitted for such filings; and (5) in the period before *Heraeus-Amersil* payment was made within 60 days of the date of billing, thus avoiding any necessity for forwarding the matter to the United States Attorney concerned, a final resort, for collection or other action. On the above assumptions, therefore, the approximate dates for payment for each of the items described above would be: (1) after *Heraeus-Amersil,* March 1, 1984; (2) under H.R. 3159, April 25, 1983; (3) under our proposal as approved by the Council of the Section of Administrative Law, October 1, 1983; and (4) as the matter stood before *Heraeus-Amersil,* June 1, 1983. It is thus apparent from the example given that, under the proposal approved by the Council of the ABA Section of Administrative Law, payment would be required to be made approximately 150 days sooner than under existing law as decided in *Heraeus-Amersil.* While payment under H.R. 3159 would be required to be made substantially earlier than under our proposal, it would be at the expense of inadequate time to exhaust administrative procedures available to the importer, which procedures should not be impinged upon and should remain available to importers.

THE SECTION'S OBJECTIONS TO THE BILL'S PROVISIONS

(1) The period of 25 days which would be allowed under H.R. 3159 for payment of increased duties is totally inadequate. In that period, the importer would necessarily have to inform himself as to the basis of assessment since the notice of liquidation gives only the amount claimed to be due, the port of entry, and the Customs entry number. This endeavor could well occupy more than the 25-day period proposed and other necessary arrangements for payment could require additional time up to the 90-day period allowed now for protest.

(2) Importers who are in disagreement with the increased duty assessment should not be required to pay such increased duties upon liquidation or at any time before their rights to seek administrative review have expired.

(3) The amounts which are so assessed are often quite large. Although they may in proper instances be cancelled upon administrative review, the requirement for payment before the facts upon which the assessment is based and without full opportunity to apply for administrative review, would produce an exceedingly harsh result. And this in the face of the fact that it is Customs itself which initially determines the amount of duty to be deposited. In many cases, the changes in classification of the imported merchandise or advances in value may be determined months or years after the goods have been released by Customs and sold by the importer.

Any such sale may have been made at prices based upon the facts known at the time of sale before the receipt of notice of increased duties. Payment of interest at current rates, would thus impose an additional servere hardship on importers, sufficient perhaps to put many importers out of business, especially in the case of smaller companies.

(4) The retroactive feature imposing interest on increased assessments on unliquidated entries outstanding at the time of enactment, even though administrative review may be under consideration at the time, would be harsh and unfair.

SUMMARY OF POSITION

The Section of Administrative Law, American Bar Association:

(1) Opposes the provisions of section 1(a) of H.R. 3159 which would make increased duties due upon liquidation or reliquidation and payable within 25 days thereafter.

(2) Alternatively, would not oppose a provision which would make increased duties due and payable within 30 days after the date of final decision on a protest or after the protest period has expired without a protest having been filed. Such a provision would advance payment by 150 days over that now allowed under *Heraeus.*

(3) Recommends that any amount assessed as interest by reason of late payment of increased duties be refunded to the importer or payee as a part of any amount returned if duties are eventually refunded.

(4) Opposes the retroactive effect of the provision for payment of interest on liquidations and reliquidations made after enactment and before the effective date of the Act in section 1(b) of H.R. 3159 and recommends instead that the provisions be made applicable only to entries made on or after the effective date of the enactment, a provision which is ordinarily and routinely included in legislative provisions governing importations of merchandise.

(5) Supports the provisions of section 2(a) for the payment by the Government of interest on any repayment of increased duties and recommends also that interest be paid on refunds of duty deposited against the original entry.

(6) Recognizes, and urges the Congress to recognize, that Customs, not the importer, should be responsible for any delays in the administrative process once a protest has been duly filed and that interest should not accrue during the period of any such delay.

(7) Opposes any requirement for payment of increased duties before the administrative process has been exhausted.

(8) Recommends that the legislative history of the bill include a suggestion that Customs discontinue its present practice of holding protests without action for the full statutory period of 90 days allowed for filing a protest after liquidation or reliquidation in anticipation of the filing of an amended or a second protest, an action which occurs only infrequently, to the best of our knowledge and belief. An amendment to the language of H.R. 3159 to accomplish the desired result is not being proposed in order to avoid affecting adversely the rights of the protestant to amend his protest during that portion of the 90-day protest period remaining and any rights of others who may be concerned. While such an insertion would or might require Customs to consider a later-filed amendment or possibly an additional protest, this should not be a major impediment to the adoption of this suggestion and in the meantime Customs could accelerate the administrative procedures in the vast majority of cases in which amended or additional protests are not filed.

CONCLUSION

The Section of Administrative Law urges the amendment of H.R. 3159 in the course of consideration of the bill or any similar successor bill to conform to these views.

A copy of the bill marked to show the amendments recommended by lining through material to be deleted and by underscoring material to be added is attached.

98TH CONGRESS
1ST SESSION

H. R. 3159

To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1983

Mr. GIBBONS (by request) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To require that customs duties determined to be due upon a liquidation or reliquidation are due/~~upon that date, and for~~ after a protest has been filed and denied, or after the time to file a protest has expired, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 505 of the Tariff Act of 1930 (19 U.S.C. 1505) is amended by adding at the end thereof the following new subsection:

"(c) Duties determined to be due upon liquidation or reliquidation shall be due on the date/~~of that liquidation or~~ that a protest filed against the entry covered by the liquidation or reliquidation has been denied or, in the case where no protest has been filed, the period to file a protest under Section 514(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(2) has expired, ~~reliquidation;~~ and unless payment of the duties is received by the appropriate customs officer within thirty ~~twenty-five~~ days after the later of said dates, as the case may be, payment ~~that date~~, shall be considered delinquent and bear interest from the date of denial of the protest or termination of the period set forth in said section 514(c)(2) of the Tariff Act of 1930, whichever occurs later, at a rate deter- ~~liquidation or reliquidation at a rate deter-~~ mined by the Secretary of the Treasury.".

(b) The amendment made by subsection (a) shall take effect on the thirtieth day after the date of the enactment of this Act ~~and~~, and shall apply with respect to merchandise entered, or withdrawn from warehouse, for consumption ~~for purposes of applying the amendment with respect to liquidations and reliquidations made before such thirtieth day, but with respect to which the duties due thereon are not paid on or before such day, such liquidations and reliquidations shall be deemed to have been made~~ on or after such thirtieth day.

SEC. 2. (a) Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) is amended by adding at the end thereof the following new subsection:

"(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as estimated duties under section 505(a) of this Act or as increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the date of entry in the case of estimated duties and the date of liquidation or reliquidation in the case of increased duties. ~~of liquidation or reliquidation.~~ The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section

2632 of title 28, United States Code, whichever occurs first.".

(b) The amendment made by subsection (a) shall apply with respect to reliquidation determinations made or ordered on or after the date of the enactment of this Act.

Sec. 3. Section 515(a) of the Tariff Act of 1930, as amended, is further amended by inserting a comma immediately after "excess" in the second sentence thereof and the following words: "including any payment of interest on same,"

SURETY ASSOCIATION OF AMERICA,
Iselin, NJ, March 23, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth Building, Washington, DC.

DEAR MR. SALMON: This written statement is being submitted by the Surety Association of America, a trade association supported by the 550 or so member companies whose names appear on the membership list enclosed with this letter. These comments are offered in response to the March 5, 1984 letter from the Honorable Samuel M. Gibbons which explained that, since time did not permit the giving of oral testimony on November 15, 1983, written statements would be accepted.

The proposed bill, H.R. 3159 would overturn the Court of Customs and Patent Appeals decision in the case of U.S. v. Heraeus—Amersil. Because of this decision, importers could postpone the payment of increased or additional duties until either the protest period or the time to appeal to the Court of International Trade had expired. At the minimum, importers could delay such payments for several months and at the maximum, payments could be delayed for years. Hence, there is a strong incentive for importers to file frivolous protests and thus get a very long extention of credit, at the Government's expense.

Our member companies are very concerned about the possible adverse effects of the Heraeus—Amersil decision. Since this decision was rendered, they have noticed a substantial rise in the number of protests filed in connection with increased duties assessed at liquidation. Surety companies find this trend disturbing since the filing of a protest, even if frivolous, enables the importer to delay payment of duties until 180 days after the protest is denied. Since surety companies provide the bonds required of importers by Customs to secure the revenue, they automatically guarantee the payment of these duties. The payment delays permitted as a direct result of Heraeus—Amersil hamper any surety efforts to insure that the importers pay their duties in a timely fashion. Moreover, these collection delays adversely effect the cash flow of the U.S. Customs Service and eventually impact all taxpayers.

The Surety Association believes that the enactment of H.R. 3159 will rectify the situation created by the Heraeus—Amersil decision. By imposing interest upon unpaid Customs' bills, it will no longer be advantageous for importers to file frivolous protests of increased duties assessed at liquidation. If the protest is denied, the importer or surety will owe interest to the government and hence either would be reluctant to protest unless there was a reason to believe the protest might be successful. It is believed that enactment of this bill will substantially reduce the number of protests filed, dramatically speed up the payment of duties, and save the U.S. Customs Service considerable expense as it will reduce the need to keep track of receivables owed over long periods of time.

Our only concern with the bill is its 25 day provision for Customs' bills to be paid before the tolling of interest. This is a rather short period of time and we do not know that it is practical. If the established time-frame is too short, the Customs Service and the sureties would probably become engaged in a colossal paper work exchange that would not accomplish much except to raise everyone's costs. We believe a more realistic time period would be 45 days. This should allow time for Customs to provide necessary documents and give the debtor time to render its check so that it would be received and posted by Customs before the deadline was reached. With such a change, we will support this bill without reservation.

SUMMARY

1. The Surety Association urges that you give favorable consideration to H.R. 3159.
2. The Surety Association would prefer a 45 day time frame for Custom bills to be paid before the tolling of interest as opposed to the 25 days now stipulated in the proposed bill.

Thank you affording this opportunity to offer our views. Should you have any questions, or be in need of further information, please feel free to contact us.

Very truly yours,

DENNIS E. WINE,
Director, Surety Department.

H.R. 3174

Relating to the tariff treatment of certain telescopes not designed for use with infra-red light.

BURRIS CO., INC.,
Greeley, CO, March 27, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: We have been informed that in the near future there will be testimony on H.R. 3174, a bill to permanently suspend the duty on certain telescopes and telescopic sights.

Our company is a domestic manufacturer of telescopic sights and we oppose this bill because if it was enacted it would in our opinion have a serious negative impact on our sales and most likely would jeopardize the jobs of our seventy employees.

Recently the W.R. Weaver Company, a Texas manufacturer of telescopic sights, permanently closed with the loss of 300 jobs.

The stated reason for their closure was they could not compete price wise with imported telescopic sights.

The tariff relief proposed in H.R. 3174 could cause the demise of the remaining three U.S. Manufacturers of telescopic sights and we respectfully request a negative action on this bill.

Sincerely,

DON J. BURRIS, *President.*

REDFIELD CO.,
Denver, CO, March 28, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. JOHN J. SALMON: I sent you the attached mailgram and letter regarding passage of H.R. 3174. Since then an American company started 51 years ago by an American pioneer in our industry and employing over 700 Americans at it's peak, has gone out of business and is being auctioned off.

The press release dated 1/11/84 (attached) explains the closing was because of "loss of business due to low priced imports from Japan and South Korea."

There are only three of us left in America. I implore you to defeat Bill H.R. 3174 or America will suffer the continued loss of more jobs and also hurt our national defense capabilities temendously.

Sincerely,

FRANKLYN C. SCHADRACK,
General Manager.

[Press release Jan. 11, 1984, El Paso, TX]

Olin Corporation announced today that it is closing W.R. Weaver Company and that an orderly shutdown will begin immediately. It is expected to take several months.

The announcement stated the decision was made because of the increasing loss of business due to low-priced imports from Japan and South Korea.

The operation employs 275 persons, including 52 salary people.

The operation, which has been for sale since April, continues to seek a buyer. It made telescopic sights, mounting components and systems for sporting rifles and handguns.

Weaver will continue to honor its warranty obligation of 1 year from date of purchase by the customers.

Weaver confirmed out of business, auctioning off all land, buildings and equipment, another 275 American jobs lost on top of 300 lost when they cut back in 1982.

Redfield, Co., *Denver, CO.*

We recently learned of a bill presently before the House of Representatives, H.R. 3174 sponsored by Mr. Matsui, which would eliminate the import tariffs on telescopic rifle sights with a value under $50.00. We would like to ask your help in defeating this legislation.

The total telescopic rifle sight business is a small market in the United States (less than $100 million dollars) with only a handful of domestic manufacturers producing them. Under the provision of H.R. 3174 there would be no tariff on riflescopes under $50.00 in value. Almost all the scopes imported from the Orient have a value of less than $50.00. If the large number of sights which fall in the "under $50.00" range were given such a tremendous marketing advantage, all of the U.S. manufacturers would be severely damaged. I know our firm would suffer a sharp sales decline and have to reduce our work force permanently.

I would like to point out to you that similar action in the past has all but eliminated U.S. manufacturers of binoculars, spotting scopes, etc . . .

While the economic impact would not be felt in our nationwide economy, there would be ramifications that affect our national defense. Without an active optical sight manufacturing industry with engineering experience and operational ability to rapidly convert to the production of military sights, our nation would be at a disadvantage in the event of hostilities.

We feel that elimination of the present tariffs in time would lead to a sharp decline and quite possibly the end of optical sight manufacturing in this country. More jobs would be lost.

A further consequence would be a reduction in optical research, further eroding our U.S. technological base.

For all of these reasons we ask your help in defeating this proposed change.

Franklyn C. Schadrack,
General Manager.

[Mailgram]

Redfield Co.,
Denver, CO, November 11, 1983.

Hon. John L. Salmon,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, Washington DC.

Dear Mr. Salmon: I am informed that the Committee on Ways and Means has scheduled a hearing on tariff bills, including H.R. 3174, on Tuesday, November 15, 1983.

Passage of this bill will eliminate another thousand American jobs. It will eventually close down all American production of optical rifle scopes. At this point our national defense would have to depend totally on foreign sources for products necessary to defend our country. I implore you to vote no bill S. 1642 to save American jobs, save American companies and allow America to produce its own national defense products.

Franklyn C. Schadrack,
General Manager.

Tasco,
Miami, FL, March 26, 1984.

John L. Salmon,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: I understand that the Trade Subcommittee has requested additional comments regarding miscellaneous tariff and trade bills initially considered by the Subcommittee at its November 15, 1983 hearings. As president of one of the largest American firms importing optical products from the Far East, I am writing in support of H.R. 3174, a bill relating to the tariff treatment of certain telescopes not designed for use with infrared light. The following is a summary of information brought to my attention since the November 15 hearing, which I believe, will be useful to the Subcommittee in its discussion of H.R. 3174. My position is presented in greater detail in my January 31, 1984 letter to Mike M. Masaoka, copy attached.

The Weaver Company, the sole opponent of H.R. 3174, has discontinued production of riflescopes as the parent company, Olin, announced the shut down as of January 11th. Since then, no further riflescope production has been known to the trade.

Weavers's uncompetitive position in the U.S. riflescope market did not result from import competition, but from poor quality control of its manufacturing operations and ineffective marketing strategy. Weaver's "Challenger" brand riflescope, offered as the low end in its full line to compete with imports, was a poorly constructed product which undermined Weaver's goodwill and customer confidence in its products. Additionally, Weaver suffered from its decision to directly distribute lower-priced models through discount retail chains. Weaver lost a substantial portion of its distribution system, as smaller retailers and wholesalers were forced to drop the Weaver lines when they could not compete with discount retail prices and still maintain their profit margins.

Other companies in the domestic riflescope business did not suffer a decline in their businesses, as did Weaver. Some of these firms, such as Luepold and Stevens and Burris, enjoy continued success and growth with high quality, higher priced riflescopes and will not be affected by enactment of H.R. 3174.

Enactment of H.R. 3174 will not have a detrimental effect on national security. Weaver is not the sole supplier of riflescopes to the Defense Department. It is not a supplier of higher-quality, higher-priced scopes made for the military by other domestic and foreign suppliers.

Duty-free treatment of lower-priced riflescopes and telescopes from Japan, would not lead to an automatic decrease in prices of 17% retail, as alleged by Weaver, but would enable further improved quality at prices currently paid for lower-quality merchandise, this benefitting the consumer.

In the event there is any further material, or information that I can possibly offer the Subcommittee, please call on me. I hope the subcommittee will act favorably on H.R. 3174.

Respectfully,

George G. Rosenfield, *President.*

Tasco,
Miami, FL, January 31, 1984.

Mike Masaoka Associates,
Suite 520, The Farragut Building, Washington, DC.
(Attention: Mr. Mike M. Masaoka.)

Dear Mike: Thank you for sending me a copy of the statement that Weaver Company was going to present before the Trade Subcommittee. I understand from what you say that Weaver has not yet testified because the hearings were adjourned half way through its schedule. Although you said the hearings will resume sometime after Congress goes back into session, I want to remind you to be sure to let me know the exact date and time.

Mike, I'm glad you sent me a copy of the Weaver testimony because there are so many things in that statement which are wrong, misleading, or inaccurate. First of all, you should know that Weaver is not going to be in business any longer. The company put out a news release (a copy is attached) announcing that it will cease manufacturing operations and that it would disband completely in about one year. Weaver is a division of Olin Corporation which also owned and closed Winchester—the old and famous company that made rifles. Olin acquired and kept both Weaver and Winchester for some time because Olin was a conglomerate and apparently was interested in diversification. Eventually Olin lost interest in non-chemical business and sold Winchester, keeping that part of the company producing top-of-the-line, expensive rifles. I think Olin decided to close Weaver because there is no point in keeping a riflescope company without owning a rifle company.

Let me tell you a little of Weaver's history which led to its uncompetitive position in the U.S. market and probably led to its demise as an Olin subsidiary. Because our company has competed with Weaver for many years and because our buyer Al McCreight formerly was with Sears, I can describe the situation first-hand.

Weaver's failure came in two aspects of the business; quality control on its merchandise and marketing strategy. Weaver supplied riflescopes to Sears for many years—even though Weaver refused to upgrade its products and correct defects—because Sears wanted to "Buy American". Sears eventually decided to add the Tasco line (manufactured primarily in Japan), to its catalogue offerings, and soon Tasco was outselling Weaver. Sears eventually dropped Weaver products after sales declined and returns by customers of defective Weaver riflescopes increased.

Weaver attempted to regain the low-priced end of riflescopes market with the introduction of its "Challenger" model. This model was price competitive with the imported scopes but was poorly constructed. Sears did not switch back to Weaver scopes after the introduction of the Challenger series, but other retailers picked it up. The Challenger marked the beginning of the end for Weaver. Retailers who sold the model eventually admitted they made a mistake in offering a product of such low quality.

On the marketing end, Weaver made the error of offering its lower priced scopes directly to large discount retailers such as K-Mart. This strategy proved a mistake. Smaller retailers no longer would carry the Weaver scopes because they could not compete with large high-volume discount chains like K-Mart. Also, by selling directly to the large volume retailers at the same price as to distributors and wholesalers, Weaver lost the support of the middlemen who sold to the smaller retailers. Under the Weaver marketing strategy, the middleman could not make any money and neither could the retailer. As a result, the Weaver scopes were not carried by the smaller stores which promote and service products. Weaver eventually lost a substantial portion of its distribution system by trying to compete with imported scopes from countries such as South Korea and Taiwan, which sent products to the U.S. duty-free under the GSP program and also sell through large discount houses. The combination of the poor quality Challenger series and a marketing strategy aimed at discount-type outlets apparently has resulted in diminished sales and the loss of confidence in Weaver products.

Interestingly, Weaver still manufactures a high-quality scope in the $250-$300 retail range, the "Silhouette", which competes well with other top-of-the-line scopes. Weaver also has a virtual domestic monopoly on manufacturing of accessories for scopes, called "rings and bases", and has a growing business in that area.

As an indication of the relative health of the domestic riflescope businesses, U.S. makers Leupold & Stevens, Inc. and Redfield Co. are enjoying considerable success with high-quality, top-of-the-line products priced considerably above imports from Japan, Korea, or Taiwan. A former Redfield executive recently formed his own riflescope manufacturing company, Burris Co., Inc. which is competing well against the established and highly-regarded Leupold. I doubt a Redfield executive would take the risk of forming his own company if there was no potential for growth in the market, even with competition from imports on the low-end of the price scale.

This scenario, Mike, is just to demonstrate how Weaver's decline is a matter of its own making, and not the fault of imports.

As to other arguments Weaver offers in opposition to the riflescopes and telescope duty-free bill, it is somewhat misleading for Weaver to claim that enactment of the bill would have a detrimental effect on national security. Although Weaver has supplied products to the military in the past, it is not the sole supplier to the Department of Defense. Additionally, it does not and will not be the supplier of higher-quality, higher-prices scopes, which are made for the military by other domestic and foreign makers.

Finally, I would like to refute and correct the statement made by Weaver in its testimony that duty-free treatment of lower-priced riflescopes and telescopes would automatically lead to a price decrease of 17% at the retail level for Japanese scopes. In my estimation as one of the largest importers of scopes from the Far East, imports entering duty free from Japan would not necessarily bring down prices. Imported scopes would maintain their current prices in th U.S. market, but the advantage to the U.S. consumer of duty-free imports would be the availability of substantially higher-quality products at the price currently paid for lower-quality merchandise. There would not be an automatic and greater competition from Japan scopes because Japan manufactures higher-quality products which would compete by quality rather than by lower price alone. The consumer would benefit by getting a better product for the same price or slightly less because as far as I am concerned, I would always upgrade quality rather than lower prices and bring in junk.

I would like to add two other points before I close. A few years ago, Congress passed legislation to do away with the tariff on prism binoculars. Since there are no commercial makers of prism binoculars in America, it was sensible not to have a tariff. Prism binoculars now enter duty free, but there has not been a surge of imports. Instead, there has been a steady growth of sales in prism binoculars. Consumers are getting quality products for a reasonable price. Dropping the high tariff helped to increase the market and everyone has benefitted.

The other thing I would like to point out to you, Mike, is that the elimination of tariffs for riflescopes and telescopes is not going to hurt anyone. Weaver has gone out of business because of management problems, not import competition. The other American companies are all prospering, and the lower end riflescopes are not taking business away from them. I see no reason to exempt riflescopes from the benefits of tariff suspension. I believe that the American public will benefit from not having to pay the unusually high tariffs on the telescopes and riflescopes. In fact, if the bill is to be amended, I would suggest amending it so that there would be duty free entry of rings and bases which are the accessories use to mount the riflecopes. Since each manufacturer has his own different mount, duty-free entry of rings and bases would not affect the industry at large, except to again help the American buyer.

I hope this information will be useful to you, Mike, to set the record straight before the congressional committee concerned with this matter. I would be happy to share this information with the House and Senate members if you believe it will be helpful.

Best regards.

Very truly yours,

GEORGE G. ROSENFIELD, *President.*

[Press release of Jan. 11, 1984, El Paso, TX]

Olin Corporation announced today that it is closing W.R. Weaver Co. and that an orderly shutdown will begin immediately. It is expected tc take several months.

The announcement stated the decision was made because of the increasing loss of business due to low-priced imports from Japan and South Korea.

The operation employs 275 persons, including 52 salary people.

The operation, which has been for sale since April, continues to seek a buyer. It made telescopic sights, mounting component and systems for sporting rifles and handguns.

Weaver will continue to honor its warranty obligation of 1 year from date of purchase by the customers.

Refer questions to Olin Corporation, Mr. Eugene Boyo (203) 356-3125. 120 Long Ridge Road, Stamford, CT 06904.

W.R. WEAVER CO.,
El Paso, TX, March 13, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: The W.R. Weaver Company, 7125 Industrial Avenue, El Paso, Texas, was closed January 11, 1984, by its parent organization, Olin Corporation. All plant employees have been laid off and an orderly closing is in process.

Mr. Thomas will not be available for testimony in regards to tariff bill H.R. 3174.

Very truly yours,

R.C. HOLZHAUER,
Manager, Administration.

H.R. 3311

To suspend for a 3-year period the duty on (Bicyclohexyl)-1-carboxylic acid 2-(diethylamino) ethyl ester hydrochloride.

No comments received on this bill.

H.R. 3312

To suspend for a 3-year period the duty on 1-Piperidinebutanol, alpha-[4-(1, 1-dimethlethyl)phenyl]-4-(hydroxy-diphenylmethyl).

No comments received on this bill.

H.R. 3313

To suspend for a 3-year period the duty on 2-[4-(2-Chloro-1, 2-diphenylethenyl)-phenoxy]-N,N-diethylethanamine dihydrogen citrate.

No comments received on this bill.

H.R. 3445

To suspend temporarily the duty on diphenyl guanidine and di-ortho-tolyl guanidine.

STATEMENT OF DONALD G. BROTZMAN, PRESIDENT, RUBBER MANUFACTURERS ASSOCIATION

This statement, in support of H.R. 3445, is submitted to the Committee on Ways and Means by the Rubber Manufacturers Association ("RMA"). The RMA is a national trade association representing nearly two hundred (200) companies engaged in the production of tires and other rubber goods. The RMA wishes to go on record in support of H.R. 3445. This bill would temporarily suspend the column 1 rate of duty for diphenyl guanidine (DPG) and di-ortho-tolyl-guanidine (DOTG) classified in item 405.52 of the Tariff Schedule of the United States.

These chemicals are of vital importance to rubber manufacturing because they are used principally as curing accelerators in the production of tires, footwear and other rubber products. Presently, DPG and DOTG are not produced in the United States although they were produced domestically as recently as 1981. Thus, U.S. rubber manufacturing companies must rely on imports as their only source. H.R. 3445 would temporarily eliminate an unnecessary economic burden and thereby enhance the competitive position of the U.S. rubber industry.

Historically, DPG and DOTG were classified under the American Selling Price category. Under the revised schedule of the Tokyo round they had a duty rate of 18% ad valorem for 1983 and a current rate of 17.3%. The annual U.S. market for DPG is approximately 4 million pounds and for DOTG it is 1 million pounds. Further details on these chemicals, including the impact on estimated revenue loss, are included in the September 28, 1983 memorandum submitted to the Ways and Means Committee by the International Trade Commission.

On behalf of the domestic tire and rubber industry, RMA urges your support and prompt consideration of H.R. 3445.

H.R. 3709

To extend the existing suspension of duty on natural graphite until Jan. 1, 1988.

BEROL USA,
Danbury, CT, January 26, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Washington, DC.

DEAR MR. SALMON: The U.S. pencil industry is largely composed of small, privately held companies. During recent years competition from cheap foreign imports has adversely affected pencil output in this country.

Accordingly, pencil manufacturers are anxious to have the temporary suspension of duty on natural graphite extended. Since there is no domestic production of natural graphite, the duty is not needed as a protection of an internal supplier. Imposition of a duty would have no other effect than to make domestic production more costly and, therefore, less competitive.

Berol USA manufactures pencil products in Danbury, CT, where we offer manufacturing job opportunities in an area oriented toward white collar employment. We employ a work force of approximately 350 people.

Berol USA produces a large product line of high quality pencil products ranging from school and office pencils to art and drafting pencils and leads produced in seventeen hardness grades. The graphite required to produce the desired smoothness and precise hardness grades is simply not available in this country.

The primary competitors for our highest quality pencil products are foreign manufacturers. Therefore, our cost competitiveness would suffer from imposition of a duty on natural graphite. Failure to extend the suspension of duty on natural graphite would have a significant negative impact on our company.

Very truly yours,

FREDERICK L. LUEDKE,
Director of Manufacturing.

CALIFORNIA CEDAR PRODUCTS, CO.,
Stockton, CA, January 26, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Washington, DC.

California Cedar Products Company is the largest supplier of incense-cedar pencil slats to the United States wood-cased pencil industry. We employ around 600 people at our slat factory here in Stockton, as well as another 300 to 400 people at the four sawmills in Northern California and Oregon, and we want you to know that we are in support of H.R. 3709 to extend the present suspension of duty on natural graphite imported to the U.S.

In recent years the pencil industry in the United States has had to weather strong competition from abroad, as well as from alternative writing instruments. The industry is composed largely of small, privately held companies, and since the duty on graphite is not necessary to protect a U.S. supplier, this suspension will serve to make these companies competitive with their foreign counterparts.

Our company has, through tremendous effort, maintained its prices into a third year. We realize that even a minute price increase would be detrimental to our customers and ultimately to the economic survival of our own company.

We are anxious to see H.R. 3709 pass and wish to be informed how we can assist in having this goal realized.

With best regards.

Sincerely,

PHILIP C. BEROLZHEIMER, *President.*

EBERHARD FABER INC.,
Wilkes-Barre, PA, January 16, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

The United States pencil industry is composed of small, privately held companies, a relatively large number of small manufacturers compared to the size of the market. At home competition is fierce both because of the overcapacity of the industry and competition from abroad. The strong dollar of recent years has made it easier for foreign imports and harder for U.S. exports in our industry. Furthermore, the loss of the U.S. federal pencil market to handicapped producers has adversely affected pencil production in this country. Therefore, manufacturers like ourselves are anxious to have the duty on natural graphite extended. Since, to my knowledge, there is no domestic production of natural graphite the duty is not needed for protection of any internal supplier. Suspending the duty will have the effect of helping domestic producers keep their prices competitive in both world and domestic markets, and will further help keep the price of pencils down for U.S. consumers.

Our company, Eberhard Faber Inc., has been manufacturing pencils for 135 years in the U.S. It is located in Mountaintop, Pennsylvania, where it employs over 400 people. In addition to our domestic production we also supply component parts to affiliates around the world, and in 1982 received Governor Thornburgh's Award for Outstanding Performance by a Manufacturing Exporter over the previous five years. In 1982 and 1983, however, our fine export record has declined considerably both because of the strength of the dollar and because of the lack of ability to obtain dollars by certain oil producing countries.

Thank you for whatever consideration you may give to this strong statement of support for H.R. 3709.

Sincerely,

EBERHARD FABER,
Chairman of the Board and Chief Executive Officer.

JENSEN'S INC.,
Shelbyville, TN, January 27, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

DEAR JOHN: Jensen's Inc. is a small, family held concern, employing about 65 to 70 people. We manufacture the graphite cores, or leads, that are then put into the wood cased pencils.

Competition from cheap foreign imports and loss of the federal market to handicapped producers have adversely affected pencil output in this country.

We strongly support having the temporary suspension of duty on natural graphite extended. All of this graphite is imported, so the duty is not needed to protect internal suppliers.

The suspension of duty will help make the production of pencils more economical and domestic prices more competitive.

Thank you for your consideration.

Very truly yours,

FRED W. WOLFE,
Vice President, Lead Research and Quality Control.

MUSGRAVE PENCIL CO., INC.,
Shelbyville, TN, January 19, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

The U.S. pencil industry is largely composed of small, privately held companies. During recent years competition from cheap foreign imports and loss of the federal pencil market to handicapped producers have adversely affected pencil output in this country.

Accordingly, pencil manufacturers are anxious to have the temporary suspension of duty on natural graphite extended. Since there is no domestic production of natural graphite, the duty is not needed as a protection of an internal supplier. Having the duty suspended has no other effect than to make production of pencils more economical and domestic prices more competitive.

Our Company is small and we do not manufacture our own graphite cores, therefore all our graphite core purchases goes to the United States manufacturers as long as they can stay competitive.

We only see an import duty of natural graphite as raising the price of our present core purchases.

Please consider the extension on the present suspension of duty on natural graphite imported into the United States.

Thank you very much.

Cordially,

HENRY HULAN III,
Corporate Secretary.

PENCIL MAKERS ASSOCIATION, INC.,
Moorestown, NJ, January 23, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

The Pencil Makers Association urges the Committee to pass HR. 3709, a bill to continue the present temporary suspension of duty on natural graphite imported into the U.S. It is the understanding of this Association that there are no domestic sources of natural graphite. Therefore, duty protects no U.S. producer and serves only to raise the price of a raw material vital to the production of pencils.

The U.S. pencil industry is largely composed of small, privately held companies. Some of these companies have seen their production fall steadily in recent years, due to inexpensive imported pencils, competition from other writing instruments, and loss of governmental pencil markets to handicapped producers.

The Pencil Makers Association represents 15 U.S. manufacturers, virtually all domestic producers of cased pencils. Plants are located in Tennessee (almost half the U.S. firms have plants in Tennessee), New Jersy, Pennsylvania, Missouri, Connecticut, Kentucky and Montana. Total employment is between 12,000 and 14,000 persons, including prime suppliers.

Members of the Pencil Makers Association urge you to continue the suspension of duty on graphite.

WILLIAM L. MACMILLAN III.

H.R. 3731

To extend temporary suspension of duties on certain clock radios until Sept. 30, 1987.

STATEMENT OF GENERAL ELECTRIC CO., AUDIO ELECTRONICS PRODUCTS DEPARTMENT, MICHAEL A. PEARLMAN, COUNSEL

PURPOSE OF SUPPLEMENT

This supplemental statement is submitted to update written testimony submitted on November 15, 1983, in connection with Subcommittee hearings on miscellaneous tariff and trade bills. It will also address testimony presented by Administration witnesses on that date and respond to questions by members of the Subcommittee. The November 15 hearing was adjourned so that the oral presentation of prepared testimony in support of H.R. 3731 could not be presented on the scheduled date.

SAVINGS PASSED ON TO CONSUMER IN RELATION TO DUTY SAVED BY IMPORTERS

Comparative retail price data between like periods in 1982 and 1983 reflect a reduction in prices of merchandise covered by the duty suspension of over 15%. For example, the average retail price for clock radios not in combination with any other article decreased from approximately $35.00 during December 1982 to less than $29.00 during December 1983. Based on approximately 10 million annual unit sales for these products, the total price reduction is on the order of $50 million.

Perhaps due to the duty suspension, but more likely due to the release of pent-up demand for consumer goods generally, clock radio imports in 1983 were $163,300,000, an increase of approximately 40% over 1982 imports. The revenue loss (after allowance for merchandise which would have entered duty-free under the GSP and subtraction of imports for the month of January 1983 during which duty was paid) was approximately $11 million. Approximately five times the amount of revenue loss was passed on to the consumer in the form of lower consumer prices. We believe this answers Mr. Schultze's questions of the Administration witness at the November's hearing and demonstrates beyond question that the duty suspension was successful in accomplishing lower consumer prices.

The revenue loss is projected to remain the same in 1984, assuming H.R. 3731 is enacted. The Tokyo Round tariff reductions have decreased duty rates for clock radios from 8.2% in 1983 to 7.7% in 1984, offsetting the full twelve months of duty suspension in 1984. It is anticipated that imports of clock radios not in combination with other articles will not show an increase in 1984.

RELATIONSHIP TO GSP

Responding to the Administration's suggestion that its GSP proposal would achieve the same result as a duty suspension, we note that as originally introduced, this proposal (S. 1718) would allow for executive discretion to negotiate GSP benefits from the exporting countries which are eligible beneficiaries, even if they exceed competitive need limits. However, Senator Heinz has introducted an amendment which deletes this feature of the proposal. Further, the current duty suspension expires on September 30, 1984, and it appears doubtful whether a GSP extension will be enacted before that date. Continuation of temporary duty suspension is therefore appropriate, at least until something more permanent can be worked out.

NO AMERICAN PRODUCERS

The Administration's objections otherwise appear to be no different than those voiced prior to the passage of the current suspension, with one significant exception. It is now confirmed, and the Administration acknowledges, that there are no domestic producers. Moreover, the Administration's witness was unaware of any American interests currently opposing this legislation. General Electric wishes to emphasize that the principal exporting nations, Hong Kong and Singapore, are well known free markets.

CONCLUSION

In summary, the duty suspension provided in H.R. 3631 should be continued as it harms no American producer (there are none), and significant consumer price reduction resulted from its implementation.

LAMB & LERCH,
New York, NY, March 20, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR SIR: By Press Release #29 dated March 12, 1984 the Subcommitte on Trade requested comments with regard to various tariff bills, one of which is H.R. 3731. As counsel for General Time Corporation, 520 Gutheridge Court, Technology Part/Atlanta, Norcross, Georgia 30092, we herewith submit the following comments regarding H.R. 3731, concerning extension until September 30, 1987 of the temporary suspension of duties on certain clock radios.

By letters of October 26, 1982 and September 6, 1983 addressed to Chief Counsel, Committee on Finance, we commented on the initiation of the current temporary suspension and its proposed extension. In said letters we explained that General Time Corporation is both a major domestic producer and importer of a wide variety of time keeping apparatus, including alarm clocks, travel and wall clocks, pocket watches, timers and clock radios. Inasmuch as there is still no domestic manufacturer capable of meeting General Times Corporation's needs for clock radios, we believe no domestic producers will be injured by the proposed extension of duty suspension. Accordingly, General Time Corporation fully supports H.R. 3731 and its extension of duty free treatment for certain clock radios until September 30, 1987. As we noted in our previous communication, duty free treatment reduces the landed cost of the imported product, and as result lowers wholesale and retail prices of the clock radios. This in turn benefits the consuming public.

Because H.R. 3731 will not adversely affect any domestic manufacturers, and will afford benefits to the public—thus favorably addressing two important factors traditionally considered by Congress in the context of duty suspensions—General Time Corporation urges the Subcommittee on Trade of the Committee on Ways and Means to recommend passage of the proposed legislation.

Respectively submitted,

DAVID R. OSTHEIMER,
Counsel, General Time Corp.

H.R. 3740

To suspend for a 3 year period the duty on 3-(Hydroxydiphenyl-acetyl) oxy)-1,1-dimethylpiperidinium bromide.

No comments received on this bill.

H.R. 3741

To suspend for a 3 year period the duty on 5H-Dibenz (b,f) azepine-5-propanamine, 10, 11-dihydro-N-methyl-, monohydrochloride.

No comments received on this bill.

H.R. 3742

To suspend for a 3 year period the duty on hydrazone, 3-(4-methylpiperazinyliminomethyl) rifamycin SV.

No comments received on this bill.

H.R. 3817

To apply for a 5-year period a lower rate of duty on ethyl and methyl parathion.

STATEMENT OF HON. BILL NICHOLS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman, I would like to express my total opposition to H.R. 3817, calling for a reduction in duty on ethyl and methyl parathion. I have more than a passing knowledge of both the production and use of these products since both take place in my district.

For years, parathion has been the top insecticide used for controlling boll weevils in cotton. There are several good reasons for this. The main ones are that it gives excellent boll weevil control, is environmentally sound and is economical to use. Defeat of H.R. 3817 will help insure that low cost parathion continues to be available to the American farmer you and I represent for this and many other positive uses.

As I stated, parathion is manufactured in my district by the Monsanto plant in Anniston, Alabama, which is the last remaining parathion plant in the United States.

Over the last several years Monsanto has spent considerable sums of money for environmental controls and process and capacity improvement. They have a model pant which has enabled them to maintain their position in the market and community.

Monsanto has been an important part of the Anniston community for almost fifty years. They are presently providing direct employment to nearly 300 people in the area. This translates to a direct payroll in excess of seven million dollars plus fringe benefits. Their overall impact on the community is more than $20 million.

The overall quality of Monsanto as an employer can best be measured by their record over the past three years. During this period, except for retirements, less than ten people left the company. All of them, except for one man who went into business with an uncle, moved from the area. Their safety record continues to be many times better than the U.S. average. They are strong supporters of the quality of life in the community. They are active in local churches, civic clubs, United Way, Boy Scouts, YMCA, school board plus any other number of places you will find hard-working, caring Americans.

The company has also been active in other areas of social responsibility. Since 1977, they have spend more than $32 million on capital investments and expenses to maintain the high standards of environmental control. In fact, the Monsanto Anniston Plant's waste treatment plant is used as the "model" facility for the pesticide indutry by the U.S. Environmental Protection Agency.

All this has not been without a negative side. Increased foreign imports and reduced market size have caused a sharp drop in plant capacity utilization. After fighting hard to keep their people on the job, they had to have a major layoff last fall due to this low demand.

The other negative point is the cost of their environmental control effort. This cost plus the low volume of operations have pushed the Anniston Plant to the verge of being too costly to operate. The loss of more business to foreign competitors could be more than they could stand.

Therefore, I urge the Subcommittee to reject H.R. 3817. It needlessly favors foreign manufacture of parathion at the expense of U.S. production, 300 American jobs, and places the future and cost of a valuable product for American Agriculture outside our control.

Thank you, Mr. Chairman. I feel that you will do the right thing for these hardworking people in Anniston, Alabama, and for the American Farmer.

STATEMENT OF HARVEY L. WEYEN, DIRECTOR, PRODUCTS, PARATHION, MONSANTO AGRICULTURAL PRODUCTS CO.

SUMMARY OF COMMENTS AND RECOMMENDATION

1. House Bill 3817 is an effort to lower the tariff on ethyl and methyl parathion insecticides for the benefit of foreign producers and to the determent of the last U.S. producer.
2. Imports of ethyl and methyl parathion continue to increase in the declining U.S. market. In 1983, imported parathions accounted for approximately 21 percent of the total U.S. sales.
3. These dramatic increases in imports occurred with the existing tariff, which H.R. 3817 seeks to lower.
4. U.S. parathion production capacity is approximately three times U.S. consumption. The U.S. producer operated its parathion plant at a loss in 1983. Further deterioration of the U.S. market volume to imports could cause the closing of the one remaining U.S. manufacturing location.
5. Operating rates of 39 percent of capacity in 1983 caused a layoff of a major part of the workforce at the Anniston, Alabama, plant which manufactures parathions.
6. Increased imports will cause the closure of this plant, resulting in the permanent loss of approximately 300 jobs.
7. H.R. 3817 be rejected by the House Trade Subcommittee.

I. SUMMARY OF OBJECTION

This bill, similar to H.R. 3649, rejected by the House Trade Committee in 1982, is an effort to lower the tariff on ethyl and methyl parathion insecticides for the benefit of foreign producers and to the detriment of the last U.S. producer not driven out of business. Imports of ethyl and methyl parathion are increasing rapidly, and in 1983 imported parathions supplied 21 percent of U.S. parathion usage. This is occurring with the existing tariff which H.R. 3817 would seek to lower.

There is no anomaly in the tariff treatment of parathion. Recent GATT tariff reductions were negotiated and enacted into law adjusting the tariff on this product for elimination of the American selling price system and subjecting it to substantial cuts over the next few years. In this carefully thought out process, it was clearly recognized that variations in the levels of duty protection would occur, but that this would be short lived as the staged reductions would gradually reduce the duty rates. For Congress to accept the parathion situation as an anomaly would set a precedent for reopening all of the complex decisions made in the recent implementation of the Tokyo round of tariff reductions. (See extract of House Hearings on H.R. 3649 attached.)

The U.S. parathion production capacity is more than 2 times U.S. consumption and further deterioration of the U.S. market volume to imports could cause the closing of the one remaining U.S. producer, putting U.S. farmers to the uncertainty of having to rely on imports for this important, economical insecticide. Also, it would lead to the loss of 300 jobs at Anniston, Alabama and other Monsanto business locations.

II. BACKGROUND

Ethyl and methyl parathion are highly effective, non-persistant, low cost insecticides used by farmers for insect control on most major farm crops as well as fruit and vegetable production. However, the volume of parathions used in the U.S. has dropped from 44 million lbs. in 1977 to approximately 17 million lbs. in 1983. (See attached chart.)

The attraction of the U.S. market because of the high value of the U.S. dollar coupled with the better credit risk than most other world markets has caused foreign producers to aggressively seek U.S. business, notwithstanding the current duty. As noted above, imports have been increasing at an alarming rate.

Although Monsanto, the sole remaining U.S. producer, remains competitive against imports, our costs increased significantly in the past six years due to the upgrading of production facilities to have them environmentally acceptable ($30 million in capital investment and expenses). These increased environmental expenses, which our foreign competition does not bear, have made reasonable duty protection more important to the company.

Should parathion volumes continue to drop in the U.S., Monsanto will be forced to close this already marginal profitability business. A two month layoff of production workers at Anniston was necessary starting in late October because of low product sales volume, and some employees remain on layoff today.

III. THE THREAT OF GSP DUTY FREE IMPORTS

The above describes the threat to the viability of the last U.S. producer of parathion from imports at the proposed lesser duty rates set out in H.R. 3817. An even bigger threat is that countries like Mexico, Brazil or India might begin to export parathion to the U.S. under the current GSP program. Such sales into the U.S. market would be totally duty free. The GSP program allows certain lesser developed countries to avoid duties on products, in order to aid in their economic development, as long as the rates do not unreasonably impact U.S. producers. It is clear from the above that any significant GSP duty free sales of parathion would put our U.S. plant and its workers out of business. Because of this import sensitivity, parathion should be removed by the USTR from the list of products eligible for GSP treatment.

It should be also noted that in Mexico, Brazil and India, where parathion is produced, the borders are closed to imports to protect their parathion producers. This is another factor which bears upon whether these countries should be given GSP treatment on parathion.

IV. RECOMMENATIONS

1. H.R. 3817 be rejected by the House Trade Subcommittee.
2. Parathion should not be eligible for GSP duty free treatment. Mexico and other LDC's should not be allowed duty exemption on parathion shipped into the U.S.

However, some U.S. manufacturers do produce stretch-texturing machines, and we would propose to exclude those machines from the coverage of the bill.

Chairman GIBBONS. Any further comments on H.R. 5884?

We will take up H.R. 5947.

Mr. MILLER. Mr. Chairman, the administration is opposed to enactment of the proposed legislation.

We believe that enactment of the legislation as written will lead to a number of administrative problems. Moreover, we believe that the intent of the bill can be accomplished under current statutes. Particularly, we note that the bottling and packaging of these samples could take place in a bonded warehouse or in a free trade zone, and then when the samples are withdrawn, they would pass through Customs under the existing tariff classification for samples.

Chairman GIBBONS. You think this would be pretty difficult to administer; is that right?

Mr. MILLER. Yes, sir.

Chairman GIBBONS. All right.

Any further comments?

We will take up H.R. 6268 by Mr. Scheuer.

Mr. MILLER. Mr. Chairman, the administration is opposed to enactment of H.R. 6268. There is domestic production of certain small toy and novelty items which would be covered by H.R. 6268, such as balloons, marbles, puzzles, die-cast vehicles, models, and other small rack toys.

In addition, many imports are inexpensive copies of domestic designs and compete with more expensive domestic products. It has been reported by manufacturers of practical joke articles that new products are copied by people in as little as 3 weeks from the date of introduction.

The majority of these imports are already eligible for duty-free entry from beneficiary-developing countries under the U.S. generalized system of preferences. Taiwan, Hong Kong, and Korea are major sources of imports. If these countries lose GSP eligibility on these items, it is because they have been graduated from eligibility. It has been determined that they have reached a level of competitiveness that makes it unnecessary for these countries to continue to receive the duty-free GSP status.

Chairman GIBBONS. Any further comment on Mr. Scheuer's bill?

All right, we will take up the duty reduction bills.

The first is H.R. 3649, by Mr. Hollenbeck.

Mr. MILLER. The administration is opposed to enactment of H.R. 3649.

Imports of ethyl and methyl parathion compete directly with domestic production. Therefore, imports are dutiable as competitive insecticides. Assessing the lower noncompetitive rate of duty, as the legislation proposes, would not be appropriate given the existence of domestic production.

We note that while some duties were increased in the complicated conversion of specific rates to ad valorem rates in the elimination of the American selling price and during multilateral trade negotiations, domestic producers also had to bear some duty reductions. On balance, acceptable compromises were developed and ne-

taken from Hearings before Subcommittee on Trade, May 17 & 26, 1982. Serial 97-58.

gotiated with our trading partners. We are very wary of opening up this carefully balanced package, unless there are overriding reasons to do so. In this case, we believe there are no such overriding reasons.

Chairman GIBBONS. Any further comments on Mr. Hollenbeck's bill?

We will take up H.R. 4002, by Mr. Studds.

Mr. MILLER. Mr. Chairman, at this time the administration does not have a position on this legislation.

Chairman GIBBONS. Any further comments? When do you think you are going to have a position?

Mr. MILLER. Mr. Chairman, we have undertaken a commitment to endeavor to provide the committee with a position at the time of the public hearings.

Chairman GIBBONS. All right.

Let's take up H.R. 4913 by Mr. Gibbons.

Mr. MILLER. Mr. Chairman, the administration would have no objection to enactment of H.R. 4913, provided certain changes were made in the bill. We recommend that H.R. 4913 be amended to provide for a temporary 3-year duty reduction to confirm that the reduction of the duty on Dicofol would have no economic effect on the competitiveness of other pesticides produced in the United States.

We also recommend the deletion of the retroactive application of the lower rate of duty, since its inclusion would establish a costly precedent, and would provide windfall benefits to some importers.

Chairman GIBBONS. Well, we don't want to do that. We don't want to provide any windfalls.

All right, any other comments?

Let's take up H.R. 5490 by Mr. Frank.

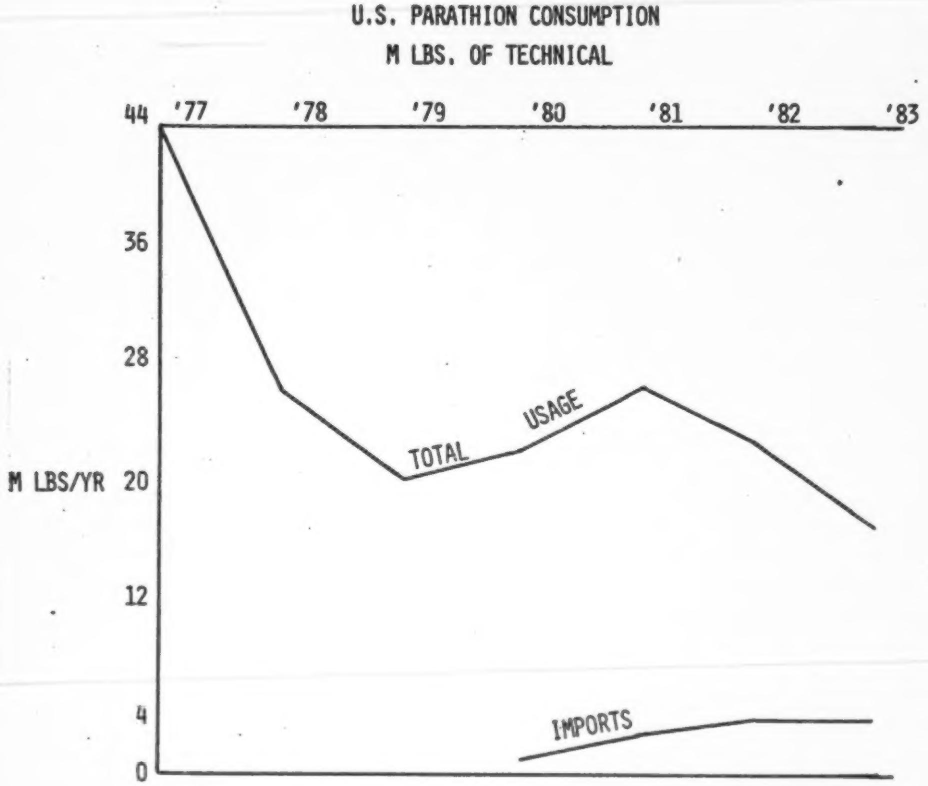
Mr. MILLER. Mr. Chairman, the administration objects to enactment of H.R. 5490. There is at least one U.S. firm which assembles snap blade knives using foreign components. This firm would be disadvantaged by the enactment of this legislation.

Moreover, the bill would unilaterally reduce tariffs on snap blade knives and parts at a time when the U.S. Government is attempting to obtain substantially equivalent market access from other countries for U.S. exports. The main foreign supplier of snap blade knives and parts is Japan. A unilateral tariff reduction on imports from Japan would be counterproductive during this period of high bilateral trade deficits with Japan.

Chairman GIBBONS. What is a snap blade knife?

Mr. WEISE. Snap blade knives consist of a plastic or metal handle enclosing a cutting blade of about 3 to 4 inches in length. By means of an adjustment mechanism incorporated in the handle—a grooved metal frame with teeth on one side and a spring and/or a set screw—the length of the exposed cutting surface may be varied, giving the tool multiple uses.

It is about the size of a pen. You hold it and operate it with your thumb. The blade is lightly scored on one side, so that, with the aid of the adjustment mechanism, the end section of the blade may be easily snapped off, so that a new sharp cutting surface is exposed. The tool is used primarily in cutting wallpaper.



Statement of George E. Miller, Vice President, Trans Chemic Industries, Inc.

SUMMARY

Mr. Chairman, I am George E. Miller, Vice President of Trans Chemic Industries, Inc. and I am accomplished here today by Graham Purcell of the Law Firm, Bishop, Liberman, Cook, Purcell and Reynolds. I thank you for this opportunity to testify before you and your subcommittee on behalf of H.R. 3817.

H.R. 3817 addresses a stepped down reduction in the tariffs on ethyl and methyl parathion over a five (5) year period. The reasoning for the request in H.R. 3817 is that during the "Tokyo Round" of tariff negotiations, our trading partners requested that the U.S. drop the American Selling Price Concept of tariffs. We all know that the American Selling Price Concept was enacted to protect an infant chemical company from low priced imports. Due to the fact that this infant industry matured into a giant, the United States agreed to eliminate the American Selling Price Concept and substitute rates of duty which would be substantially equivalent to what was previously collected.

The intent of Congress at that time was that there be no substantial change in the amount of duty either upward or downward. This worked for most dutiable items, but the parathions were placed in a classification basket where the duty actually rose 53%, which we do not believe to be fair nor the intent of Congress and the relief we are requesting in H.R. 3817 addresses this attempt to be fair.

I will not attempt to go through the rocky history of the Parathions, but I will try to give some of the highlights. The Germans discovered the parathions as an insecticide. In the 1950s many companies both in the United States and abroad started production of these excellent insecticides. In the 1960s, there were as many as five producers of the Parathions in the United States. A price decrease of over 50% which brought the price from 88¢/lb. to 40¢/lb. overnight basically created the situation we have today. There is only one U.S. producer in the United States, thereby creating a virtual monopoly on this insecticide.

Since the new tariff has been in effect, the price of methyl parathion has risen from $1.02/lb. to a list price of $1.55/lb. to the formulator, an increase of 52%. At the same time formulators in other countries are paying much less for this product. In Mexico, due to Government support, the formulator was only paying 73¢/lb. for methyl parathion in 1983. The export price from the United States' only producer was $1.02/lb. in December, 1983. At the same time, our formulators are paying $1.55/lb. a differential of about 38%. Is this fair to our growers and consumers? Our growers are spending millions of dollars more for pest control than growers of the same crop overseas.

Today, when we are trying to be competitive in the export market with our most precious export item, our Agricultural Production, we place our growers at a disadvantage. How can we be competitive in agricultural commodity exports when our production costs are so much higher?

We believe the real issue here should not be whether one American producer can supply this valuable Agricultural tool to the entire market in the United States, but whether or not a one producer system, a monopoly, will be of benefit to our economy. Without the presence of Cheminova in the parathion market, there would be no choice, no alternate source of supply. There would be no competition.

We urge your support for H.R. 3817 to help keep competition in American Agriculture.

Mr. Chairman, I have summarized my more detailed written testimony and with the permission of the Chairman, I wish to include my written testimony for the record.

Mr. Chairman, if you or any of the Subcommittee members have any questions, I will be more than willing to answer them.

STATEMENT

Mr. Chairman, my name is George E. Miller, Vice President of Trans Chemic Industries, Inc., Secaucus, New Jersey. Trans Chemic is the United States Agent for Cheminova of Denmark, producers of ethyl and methyl parathion and other important agricultural pesticides. With me today is Graham Purcell of the Law Firm, Bishop, Liberman, Cook, Purcell, and Reynolds.

I would like to thank you for this opportunity to testify before your subcommittee on behalf of HR 3817.

The parathions are phosphate insecticides and have been utilized in modern agriculture since the late 1940s. The parathions, because of their rapid action on pests and short term residual became important tools to the American farmer. These two products are still important tools for the production of food, fiber, and feed. Over the ensuing years, many companies went into the production of the parathions—Stauffer Chemical Company, Shell Chemical Company, American Potash Company (now Kerr McGee) and Retzloff Chemical Company (purchased by Velsicol Chemical Co.). This excellent pesticide was also being produced overseas by several of our trading partners including Denmark and West Germany where the compound originated.

Prior to the "Tokyo Round" of tariff negotiations, the U.S. parathion producers were protected by the benzenoid tariffs and the American Selling Price Concept.

The American Selling Price Concept was enacted to protect a fledgling chemical and dye industry from low priced imports and to guarantee the production of certain critical chemicals and dyes needed for the defense of the United States. The chemical and dyestuff industry has grown from infancy to gigantic proportions and therefore in response to requests by our principal trading partners during the "Tokyo Round" of tariff negotiations, the United States agreed to eliminate the American Selling Price basis for valuation and to substitute rates of duty which would produce revenues substantially equivalent to the revenues collected under the American Selling Price System.

With the elimination of the American Selling Price Concept, the intent of Congress was clear in that there should be no substantial change in the amount of duty either upward or downward. The new duty rates were not intended to increase or decrease the amount of duties collected. In the case of the parathions, however, the rate of duty was increased by 53 percent instead of remaining the same. H.R. 3817 addresses a step down reduction in the tariffs over a five (5) year period in order to show fairness and the past intent of the Congress. Denmark has long been considered one of our favorable trading partners. A country of only five million people purchased $1.54 billion from the United States while exporting only $842 million to the U.S. A very favorable balance of trade, and yet, the new tariff schedules raised the duty of one of their exports 53 percent. This small country is also one of the most environmentally active countries in the world. In order to achieve the environmental changes deemed necessary not only by the Danish Government but also by

Cheminova, Cheminova had to establish new purification techniques for water and air making the plant facility an environmentally safe model in Europe. Cheminova is proud of these achievements although the changes took time and a great deal of money.

The history of the parathions has been a rough and rocky road from its origin as a compound in Germany to the present day. In the early 1960s, there were as many as five producers in the United States alone, but there was also production in Denmark and West Germany. At that time, the price for methyl parathion to formulators in the United States was 88¢/lb. while the price to overseas formulators was 40¢/lb. This 40¢/lb. price to overseas formulators was being quoted not only by overseas manufacturers but also by Monsanto from production in Alabama. The end price to farmers overseas was cheaper than the price to our American farmer.

Competition among the U.S. producers of parathion gradually started reducing the prices to the American formulator until a day known as "Black Monday" in the pesticide industry. Monsanto, over a weekend, reduced the price for sales in the United States to 40¢/lb. Salesmen went to formulators on this Monday and booked orders at this new low price which really only equaled the export price for the first time.

Many of the U.S. producers of the parathions, due to not being able to be competitive, were forced to cease production and either leave the business entirely or become co-producers (buying the product from one producer for resale). Finally there were only two producers of the parathions on the market. In the late 1970s, Kerr McGee Chemical finally ceased production and sales of parathions, leaving the U.S. market with only one producer. The Kerr McGee share of the total U.S. parathion market was between 15 percent and 20 percent in the late 1970s. At the time, Kerr McGee suspended sales, the price to the U.S. formulator was between $1.02/lb. and $1.05/lb. As each producer had to withdraw from the marketplace, the price increased. In 1973, 48.1¢/lb. to 1978 where the price to 98¢/lb. (Please see exhibit 1, attached.) The list price on methyl parathion today $1.55/lb. to the American formulator by the sole domestic manufacturer. The price for export by this same domestic manufacturer is between $1.02/lb. and $1.08/lb. depending on the market to be sold. Again, the American formulator and the American farmer are paying more for the same pesticide.

Cheminova of Denmark was selling small amounts of parathion in the U.S. market until the price reached 40¢/lb. They too, were forced to stop the sale of parathions here. When Kerr McGee retired from the marketplace, Cheminova attempted to start sales again at the urging of several U.S. formulators who wanted an alternate source of supply and a choice of suppliers. Cheminova, though selling their parathions throughout the world exported 568 tons in 1980, 1,703 tons in 1981, and 1,509 tons in 1982. This small tonnage in no way even approximates 10–12 percent of the U.S. market and is not at all near the 15–20 percent market share vacuum left when Kerr McGee retired from the market. Of course, starting with almost 0 percent, the percent gain in sales would have to be significant.

Even with only the small amounts of the parathions that Cheminova has shipped to the U.S., we feel that there has been a stabilizing influence on the marketplace. Fair competition in the marketplace is essential for our American farmer. American agriculture is in trouble today. The high currency conversion of the dollar against foreigh currency, low cash reserves, and several consecutively poor years of production have placed the average farmer in a poor position. He needs every advantage that is obtainable to help reduce his cost of growing his crops. He does not need a monopoly in one of the very important pesticides used in our country.

Many products, including pesticides, after the patents expire are manufactured overseas and imported into the United States. Based on tariff negotiations, duties on these products have been decreased over the years. The effect of these imports, with the lower duties on the domestic producer have not forced the producer out of business, has not closed production plants, but has added a new value to the market * * * competition. In the case of the herbicide, atrazine, for example, the American farmer benefited from the imported competition. The price to the farmer dropped approximately 40 percent due to this competition. This is the way it should be after the monopoly created by a patent ceases * * * free competition.

We believe the real issue that should be addressed by this subcommittee on H.R. 3817 is not whether one American producer can supply the entire market but whether or not a one producer system will benefit the country. We are sure that the Congress did not intend to create a monopoly with their laws. We are sure it was not the intent of Congress to punish one of our good trading partners.

We urge your support of H.R. 3817 to give the American farmer an alternate source of supply in case of domestic production problems, to help stabilize the market for the American farmer and to keep competition in the marketplace because our farmers need every possible advantage in reducing the cost of growing his crops. Without a Cheminova in the parathion market, there would be no alternate source of supply and no competition in the marketplace.

We urge your passage of H.R. 3817 to help keep competition in American agriculture.

Mr. Chairman, if you have any questions, I would be very happy to answer them.

[Article]

METHYL PARATHION

U.S. farmers will use 30 to 40 percent more methyl parathion in 1984 than in 1983, according to Harvey Weyen, Director of Parathion Products at Monsanto Company and cotton growers will use 50 percent more. Mr. Weyhen attributes the increase in usage to higher crop production anticipated next year and the resurgence of the boll weevil.

U.S. cotton production will go from about 8 million acres last year to 12 to 13 million acres this year, according to Mr. Weyen who says that demand from the Mississippi delta region, where most methyl parathion is used, will increase by more than 50 percent. The size of the increase is due to the fact that 1983 production was very low and the need for farmers to supplement their use of pyrethroid insecticides with methyl parathion to control the boll weevil.

Mr. Weyen says that cotton growers have been using the pyrethroids more than methyl parathion in order to control pests because it last for seven to ten days compared with one day for methyl parathion. The life cycle of the boll weevil, however, is only four to five days so that the pyrethroids were not being sprayed frequently enough to prevent the weevil from spreading.

In order to correct this, farmers will probably spray pyrethrum in combination with methyl parathion every ten days or so and supplement that by spraying with methyl parathion alone more frequently, Mr. Weyen says. Pyrethroids also cost about $4.50 per acre while methyl parathion costs only 75¢ per acre.

While the latter must be used more frequently it is still a more cost-effective means of controlling the weevil. The overall level of spraying is hard to predict, Mr. Weyen says, because the level of infestation will depend largely on the climate during the crop season.

Methyl parathion prices were increased by Monsanto, the sole U.S. producer, in November to $1.55 per pound for technical grade material, 80 percent, in drums, freight allowed, East. Ethyl parathion prices are unchanged and Mr. Weyen says that demand this year should remain the same as last year.

Ethyl parathion is used in orchards and on specialty crops where pyrethroids may gain a greater share, says Mr. Weyen. The Food and Drug Administration has allowed these insecticides to be used on many of the same plants.

GAINS IN WEED CONTROL YIELD POTENT, LOW-DOSE HERBICIDES

(By Ronald Alsop)

When DuPont Co. began promoting a new cereal-crop herbicide in late 1982, farmers wondered if they were being sold some modern-day snake oil. According to Du Pont's salesmen, a heaping teaspoon of Glean herbicide would purge a full acre of such pesky weeds as Canadian thistle and wild mustard.

"It was hard to imagine that I could carry enough herbicide in my arms to treat all of my 950 acres," says John Leppert, a wheat farmer in Sarles, N.D. "To do the job before, it would have taken four 30-gallon drums of another herbicide." Researchers at a Midwestern university assumed there was a typographical error in the instructions and used pounds rather than ounces of Glean.

But small doses are packing a bigger wallop as a new era begins in weed-control science. Many companies are hurrying to develop pesticides that kill more weeds without harming crops and work at concentrations of a few ounces or less per acre. Besides making the farmer's job easier, such small dosages may lessen the danger of contaminating the soil and ground water.

American Cyanamid Co. has several products in development that are expected to work at two to four ounces an acre. At PPG Industries Inc., executives say that one of their new herbicides, still about three to four years away from the market, can be applied at rates as low as one-third to two-thirds of an ounce an acre.

This move to stronger, as well as more specialized weedkillers, comes at a time when the growth of herbicide sales is slowing. Most farm acreage in developed countries has been treated with herbicides already. The National Agricultural Chemicals Association says the U.S. herbicide market more than doubled between 1976 and 1981 to $2.75 billion, but edged up only 4% to $2.87 billion in 1982.

"As the competition has increased, everybody has begun looking for better mousetraps," says Hans von Amsberg, agricultural chemicals research director at BASF Wyandotte Corp., a U.S. subsidiary of West Germany's BASF. Adds P. David Simcox, a manager in FMC Corp.'s agricultural chemicals group: "We're talking about replacing someone else's products. That will require new chemistry, not just improvement in chemistry."

Powerful, low-dosage herbicides can cost farmers as much or more per acre than older products applied by the pound. But companies claim that such herbicides will remain active longer and generally require fewer applications than traditional weedkillers. The smaller quantities are also easier for farmers to handle, although slight errors in measurement can be costly. To guard against that, Du Pont includes a plastic calibrated beaker for measuring Glenn, which sells for about $16 an ounce.

The reduced environmental risk of low-dosage herbicides may be a significant attribute, given recent concerns about ethylene dibromide, a pesticide used on fruit and grain products, and the controversy over Agent Orange, the defoliant that Vietnam War veterans claim injured them. "Applying minute amounts of chemicals should reduce the hazards to the environment and to the farmer," says Stephen Miller, associate professor of weed science at the University of Wyoming. "But these are more highly active compounds, and they should be handled carefully."

Even trace amounts of these potent chemicals in the soil can make it risky to rotate from one crop to a more sensitive variety. Such broadleaf crops as sugar beets, sunflowers and lentils can be severely damaged by tiny amounts of Glean, for example. Mr. Leppert, the farmer in North Dakota, says some people who grow broadleaf crops in the state's Red River Valley region fear that Glean could land accidentally on their fields. "It would be at least four years in North Dakota before a field treated with Glean could be used for some broadleaf crops," he adds.

Du Pont hopes to minimize that possibility with a relative of Glean called Ally that disappears from the soil faster than Glean. It was recently introduced in Britain. In all, the company is testing about a dozen products in the same chemical family as Glean, including Londax for rice crops, which will be marketed this year in Thailand, and a soybean herbicide called Classic that will be used this year in parts of the U.S.

So far, Glean is setting the industry standard for low-dosage herbicides. Developed over six years at a cost of more than $35 million, the white powder rang up sales of more than $40 million its first year on the market in 1983.

Glean conquers weeds by inhibiting an enzyme essential for plant growth. Wheat and other cereal crops aren't affected because they can metabolize Glean into innocuous byproducts. Animals don't have the enzyme, thus accounting for Glean's low toxicity.

After four years of tests on rats, dogs, cows and lactating nanny goats, scientist George Levitt boasts that Glean is less toxic than table salt. It would take nearly a pound of Glean, he says, to kill a 150-pound man, compared with about half a pound of salt.

Du Pont is still trying to educate farmers to Glean's unique mode of action. Weeds remain green and virulent looking after the herbicide is applied, turning brown and withering only after about 14 days. "Farmers become very concerned that they have spent good money and don't see any results," says Kent Reasons, a Du Pont manager. We have to tell them, "Be patient! Be patient!"

H.R. 4035

To suspend temporarily the duty on a certain chemical intermediate.
No comments received on this bill.

H.R. 4218

To extend duty-free treatment to Metatoluic acid (MTA).

MORFLEX CHEMICAL CO., INC.,
Greensboro, NC, February 27, 1984.

Hon. SAM GIBBONS,
Chairman, Subcommittee on Trade, Ways and Means Committee, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN GIBBONS: I am writing you concerning H.R. 4218, a bill which would extend duty-free treatment on meta-Toluic Acid. Meta-Toluic Acid is the major raw material to produce DEET. DEET is *the* active ingredient in all mosquito repellants. Morflex Chemical is a major producer of DEET. Morflex Chemical is a newly formed company (December 1983) that is employee owned. This business, in Greensboro, was purchased by the employees under an ESOP Plan (Employee Stock Ownership Plan) from Pfizer, Incorporated. Thus with less than 100 employees DEET represents about 25% of Morflex's production on an annual basis.

We are asking congress to remove the import duty on meta-toluic acid that is imported from Japan due to the following:

(1) The only U.S. producer, Argus Chemical, does not produce either the quality or quantity of meta-toluic acid to satisfy Morflex. We have tried to use Argus material in the past but have found, due to the uniqueness of our process, that we can not produce DEET to specification. Argus is not committed to the meta-toluic acid market in that their production capacity is only about 500,000 pounds per year of which they sell to another company. Our annual requirements on meta-toluic exceeds one million pounds.

(2) The import tariff on meta-toluic acid is 1.7 cents per pound plus 17.9% ad volorem. The import tariff on DEET is 1.5 cents per pound plus 12.5% ad volorem. Bayer Corporation, of West Germany, is exporting DEET into the U.S. Morflex thus competes with this import material and the DEET duty is less than the meta-toluic acid duty.

(3) If the meta-toluic acid duty were completely removed the import price from Japan would still be higher than the U.S. produced meta-toluic. We are paying considerable more for the import meta-toluic because of quality and availability.

(4) There are three U.S. producers of DEET, two of which are purchasing metatoluic acid from Japan. Morflex requirements on meta-toluic acid in 1984 will be about 1.5 MM pounds. Morflex requirements on meta-toluic acid have grown rapidly over the past five years, going from 700,000 pounds in 1980 to the 1.5 MM pounds in 1984. Exports of DEET are an important factor for Morflex.

Thus Morflex is seeking relief of the import duty on meta-toluic acid. We feel that such duty relief will not hurt the simple U.S. producer of meta-toluic and will allow Morflex to compete more effectively against import DEET from Germany. I thank you and your committee for considering HR 4218.

Yours truly,

GARY F. TAFT, *President.*

H.R. 4223

To suspend for a 3-year period the duty on 4-O-beta-D-Galactopyranosyl-D-fructose.
No comments received on this bill.

H.R. 4224

To suspend for a 3-year period the duty on nicotine resin complex.
No comments received on this bill.

H.R. 4225

To suspend for a 3-year period the duty on an iron dextran complex.
No comments received on this bill.

H.R. 4232

To amend the Tariff Schedules of the United States to clarify the classification of any naphtha described as both a petroleum product and a benzenoid chemical.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, June 4, 1984.

Hon. SAM GIBBONS,
Chairman, House Subcommittee on Trade,
Longworth Building, Washington, DC.

DEAR MR. CHAIRMAN: It is my understanding that the U.S. Trade Representative (USTR), William Brock, has contacted your Subcommittee regarding my bill, H.R. 4232, to amend the tariff schedules of the United States to clarify the classification of any naphtha described as both a petroleum product and a benzenoid chemical. I am writing to strongly oppose the modifications in this legislation as recommended by USTR.

In introducing this legislation, I sought to correct an anomaly in current tariff laws by which intermediate products, like catalytic naphtha and akylates, are assessed a higher rate of duty than finished products, namely finished gasoline. The present, higher tariff on catalytic naphtha derives from its benzenoid content, even though the product itself is not broken down by users for the benzenoid component. H.R. 4232 takes the logical approach that naphthas which may contain a negligible amount of benzenoids, but which are also petroleum products used as gasoline blendstocks, should be assessed at the same duty rate as is pure naphtha, $.0025 per gallon. USTR's proposed changes—in an effort to correct problems that have arisen with off-specification gasoline—not only ignores this logic, but actually aggravates the problems which my legislation attempts to correct.

By making gasoline blendstock components dutiable at the same rate as finished gasoline, financial incentives for exporting countries to ship these products to the U.S. market will disappear. If the tariff on finished gasoline were the same as that on unfinished motor gasoline components, it would be more advantageous for foreign refiners to export only finished gasoline, which they already produce more cheaply than our own refiners, to the detriment mainly of independent gas producers. As I'm sure you are aware, generally only large U.S. gasoline refiners produce these intermediate substances, but they are unwilling to sell blendstocks like catalytic naphtha and alkylate to independent oil companies and gasoline blenders. The proposal being made by USTR could, therefore, effectively choke off the foreign imports while doing nothing to encourage large refiners to open up the domestic market, thereby seriously threatening the continued viability of small, independent refiners competing in the marketplace. In the end, it will be the American consumer that will suffer from the lack of competition.

I believe that USTR's proposal will also exacerbate another major problem with current tariff laws which my bill seeks to correct. As stated above, catalytic naphtha is now subject to a ridiculously high duty because of its benzenoid content, despite the fact that it is not economically viable to break down the benzenoid components for sale by themselves. Apparently, Customs assigned the higher duty rate based on benzenoid content, ignoring the end-use of this product as an intermediate gasoline blendstock. By lumping together all motor fuel blendstocks into a single definition as "materials chiefly used in direct blending and the manufacture of motor gasolines," I can foresee endless administrative questions arising. Not only will the U.S. Customs Service have to determine "chief use," but such a definition will also further add to a problem of basing tariffs on components rather than on end-use. For example, light naphtha is often, but not solely, imported for motor gasoline blending, and Customs officials would again face the difficulty of determining whether light naphtha would be defined as naphtha and dutiable at $.0025 or as motor fuel blending stocks, dutiable at $.0125. Other, similar products would be equally hard to classify. Under my bill, on the other hand, this type of substance is clearly defined and dutiable at a reasonable rate, based on the concept of end-use.

Again, I strongly urge your Subcommittee's approval of H.R. 4232 without modification, so that logical clarification of our tariff laws in this area can finally be achieved to the benefit of our nation's already threatened, independent refiners and gasoline blenders. Thank you for your attention to this matter, and with every good wish, I am

Sincerely,

JACK BROOKS,
Member of Congress, Ninth District, Texas.

H.R. 4255

Providing for a reduction in the duty on certain fresh asparagus.
See comments of American Farm Bureau Federation at p. 189.

H.R. 4296

To amend the Tariff Schedules of the United States to establish equal and equitable classification and duty rates for certain imported citrus products.
See also comments of American Farm Bureau Federation at p. 189.

STATEMENT OF HON. E. DE LA GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, it is my pleasure to have the opportunity to address your Subcommittee on the matter of H.R. 4296, and I appreciate your taking the time to receive my testimony.

H.R. 4296 is a corrective legislative measure. It does not significantly change the tariff schedule for orange juice—it only clarifies the current tariff classification for pure and concentrated juice by separating them into two distinct sections. H.R. 4296 refines current language to make it abundantly clear that the original intent of the tariff schedule was to assess a duty of 0.20¢ on pure orange juice imports and a duty of 35 cents on concentrate imports.

What is unfortunate, Mr. Chairman, it that in recent years orange juice concentrate has been mixed with water and imported into the U.S. as a reconstituted product eligible for the special 20 cents duty normally reserved for truly pure orange juice. This re-mixing has occurred in the relative immunity of the foreign trade zone where duty fees do not have to be paid immediately. The importer has the option of paying duty on the product as is, or on a finished product slightly altered. Orange juice concentrate mixed with water is a finished product of this kind.

This reconstituted product is being brought into the U.S. under the "not concentrated" tariff section of current law—and indeed it is not truly concentrated because it has been mixed with water to represent a bogus pure juice. We all know from personal experience that pure fresh orange juice has a mellow flavor and concentrated orange juice is more tart. But if you mix a concentrate with enough water it will take on the coloration and mimic the flavor of pure juice.

If we allow this bogus fresh juice to compete with true fresh juice in our American market, the price of pure juice will naturally drop. And that's not fair to the American orange juice producer. He is held hostage because current tariff law, although intending to protect him, is not clear enough to prevent this orange juice masquerade.

We are here only concerned with equity. No one is arguing for a reduction in imports of orange juice concentrate—only a guarantee that fresh and concentrated juice can compete on their own two feet. I believe we should at the very least ensure that products compete in the marketplace as what they are and not masquerade their way through the tariff laws.

Both fresh and concentrated orange juice are viable consumer products, but fresh juice has a higher value because it it more expensive to make. It sells for a higher price in your grocery store because it is costly to produce. Concentrated imports mixed with waste threaten to lower the retail price of fresh juice—but the production costs will stay high. This is not fair to the American fresh juice producers.

Let me go on recordd with my other colleagues who have cosponsored H.R. 4296 and supported its simple rationale—to refine the current tariff law and make the original intent evidently clear.

Separate classifications for concentrated and not concentrated (fresh) juice is the equitable thing to do. We should recognize that concentrated products need not enjoy the luxury of a lower duty rate which the law says should be reserved for fresh juice. Our only problem here is that current law is lacking in precision of language that we can easily correct.

Again, Mr. Chairman, please accept my thanks for giving me that opportunity to explain my support for H.R. 4296—and I know the bill now rests with your capable Subcommittee.

STATEMENT OF BOBBY F. MCKOWN, EXECUTIVE VICE PRESIDENT, FLORIDA CITRUS MUTUAL

This Statement is submitted by Bobby F. McKown, Executive Vice President of Florida Citrus Mutual of Lakeland, Florida. FCM strongly supports and requests that the Subcommittee and the full Committee report favorably and expeditiously on H.R. 4296, a bill to provide for fair and equitable tariff classification of certain citrus products, and to close a "loophole" in the tariff classification of imported citrus juice, which may cause serious damage to the United States citrus industry.

Florida Citrus Mutual is a cooperative association of citrus growers and processors, which represents more than 90 percent of the orange, grapefruit, and other citrus growers of Florids. The citrus industry is an extremely important segment of Florida's economy, accounting for over 29 percent oft the $4.25 billion of Florida farm-gate receipts in 1982. There are in estimated 16,000 citrus producers in Florida, representing almost 20 percent of the 86,000-plus people directly employed in the Florida citrus industry in jobs ranging from harvesting to research.

Orange juice is presently imported into the United States under one of two tariff items:

(1) Item 165.30, Tariff Schedules of the United States: Not Concentrated citrus fruit juice, other than lime, not mixed and not containing over 1.0 percent of ethyl alcohol by volume, dutiable at a rate of 20 cents per gallon; and

(2) Item 165.3540, Tariff Schedules of the United States: Concentrated orange juice, not mixed and not containing over 1.0 percent of ethyl alcohol by volume, dutiable at a rate of 35 cents per gallon.

Pursuant to headnotes to Subpart A, Part 12, Schedule 1 of the Tariff Schedules of the United States: "any juice having a degree of concentration of less than 1.5 (as determined before correction to the nearest 0.5 degree) shall be regarded as a natural, unconcentrated juice." Consequently, any imported orange juice having a degree of concentration of less than 1.5 (or 17.3 degrees Brix)[1] at the time of entry may be imported as a not concentrated citrus juice, dutiable at 20 cents per gallon, while imported juice with a degree of concentration of 1.5 or greater (higher than 17.3 degrees Brix) at the time of entry is classifiable as a concentrate and is dutiable at 35 cents per gallon.

H.R. 4296 will correct an inequitable development in tariff classification which has resulted from manipulation of imported orange juice concentrate in circumvention of the intended classification and duty rate applicable to concentrated orange juice. For many years there has been international trade in fresh orange juice, and more recently a growing volume of United States imports of concentrated product. Orderly marketing practices in the United States have now been negatively affected by certain enterprising processors who have identified the above-referenced "loophole" in the Tariff Schedules of the United States, as amended. At the present time, importations of highly concentrated (65 degrees Brix) orange juice are brought into U.S. Foreign Trade Zones (FTZs) for processing by blending and the addition of water, resulting in a reconstituted orange juice product (less than 17.3 degrees Brix) which, upon withdrawal or entry into the U.S. Customs territory, is dutiable at 20 cents per gallon or less,[2] depending upon the tariff classification applied, rather than the 35 cents per gallon rate applicable to imported concentrates. One recent publicized instance of such manipulation concerns activities in the Atlanta Foreign Trade Zone, where the operator, in addition to diluting product to avoid the higher duty for concentrate, reportedly certified to the Customs Service that a much greater volume of reconstituted product was shipped out of the FTZ than was actually reconstituted.[3]

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[1] "Degrees Brix" is a standard measure which represents the refractometic sucrose value of the juice, and reflects the amount of solids contained in the juice. Pursuant to Headnote 3(b) to Subpart A, Part 12, Schedule 1, TSUS, the Secretary of the Treasury is to determine "from time to time" the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States. Currently, the average value for natural unconcentrated orange juice has been determined to be 11.8 degrees Brix which, after correction to the nearest 0.5 degree of concentration, may be rated as high as 17.3 degrees Brix to be considered unconcentrated.

[2] If the level of concentration is less than the solids content of natural juice (11.8 degrees Brix), the product may be classifiable as "fruit drink", rather than fruit juice, and is provided for under other provisions of the Tariff Schedules.

[3] *Atlanta Constitution*, January 1984.

There also have been efforts to use Customs bonded warehouses in a similar manner. In addition to FTZ manipulation, there are indications that concentrate may also be brought into Canada where there is no domestic citrus industry, and transformed at the border (adjacent to major U.S. marketing areas) into reconstituted products also entering the commerce of the United States at the lower rate of duty. Similar border operations exist in Mexico along the States of Texas, Arizona and California, and other citrus-producing States.

The sale of reconstituted product subject to substantially lower duties has a severe price-suppressing effect in normal U.S. marketing channels. It must be stressed that the principal foreign suppliers of frozen concentrated orange juice to the United States follow usual procedures and enter the concentrated product at 35 cents per gallon and, as far as FCM is able to ascertain, do not engage in the above practices. However, the low value-added manipulation of the concentrated product to produce reconstituted juice and circumvent the intended classification for concentrate yields a large, inequitable duty savings in a highly price-sensitive market. The import sensitivity of the citrus industry was recently reaffirmed in a countervailing duty determination of the U.S. International Trade Commission, which found on July 11, 1983, that the domestic industry is threatened with material injury by reason of subsidized imports of frozen concentrated orange juice from Brazil.[4] In addition, the Trade Policy Staff Committee, chaired by the Office of the U.S. Trade Representative, has consistently declined to review petitions to add orange juice to the list of products eligible to receive duty-free treatment when imported from beneficiary developing countries under the Generalized System of Preferences, 19 U.S.C. §2461 *et seq.*

The industry's vulnerability has been heightened by the recent winter freeze in Florida, the third in the last four years, which has caused a projected loss of approximately one-third of the crop. In addition to the extraordinary expenses of replacement and rehabilitation of some groves, the industry will face substantially increased unit processing costs due to the decline in volume. Under these circumstances, the price suppression caused by tariff manipulation will severely affect the industry's ability to earn the returns necessary to meet these increased costs. The unintended tariff savings yielded by this classification "loophole" will have increasingly disruptive effects on price.

As a result of the increased use of this classification circumvention, amendment to 19 USC §1202 is necessary to correct anomalous Customs treatment of increasing importations into the United States of orange juice concentrate products classified as "not concentrated" citrus juice under TSUS item 165.30, dutiable at 20 cents per gallon. The new provisions, as set forth in S. 1636, will reaffirm the intention of Congress that the lower rate of duty provided for in current TSUS item 165.30 is limited to fresh, natural orange juice, and orange juice with a level of concentration under 17.3 degrees Brix (i.e., a degree of concentration of 1.5), rather than concentrated orange juice and reconstituted derivatives thereof. The amendment insures the integrity of the Tariff Schedules by providing for concentrates and their derivatives at the 35 cents per gallon rate of duty provided for in TSUS item 165.35.

The United States, under auspices of the General Agreement on Tariffs and Trade (GATT), has granted tariff concessions on "not concentrated" orange juice (item 165.30) under the assumption that this provision applies mainly to non-reconstituted juice. However, since 1981, it has become increasingly apparent that imported orange juice in reconstituted forms has been classified as the equivalent of natural orange juice, thus taking advantage of lower U.S. tariff treatment for which no reciprocal concessions were received. This practice is contrary to Congressional intention to separately classify natural or single strength orange juices as a "not concentrated" product under item 165.30, dutiable at the specific rate of 20 cents per gallon, and to classify orange juice made from concentrate under item 165.35, dutiable at a specific rate of 35 cents per gallon.

The amendment will create a separate classification for unconcentrated orange juice, under TSUS item 165.27. This would not include juice made from a concentrated product with a degree of concentration of 1.5 or greater (as determined before correction to the nearest 0.5 degree). The result would be that orange juice imported as "not concentrated" would include only orange juice in its natural form, which is within the concentration tolerance set forth in Headnote 4 for "natural unconcentrated juice." Imported orange juice which was made from a concentrate with a degree of concentration of 1.5 or greater (i.e., approximately 17.3 degrees Brix) would be classified as "other", under new TSUS item 165.29, as would imports of concentrated orange juice.

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[4] *Frozen Concentrated Orange Juice from Brazil,* USITC Inv. No. 701-TA-184 (Final), Pub. No. 1406 (July 1983). The determination left in effect a suspension agreement whereby the Government of Brazil has agreed to impose an export tax to offset the amount of net subsidies received by Brazilian concentrated orange juice exporters. The current Brazilian export tax is 3.5 percent ad valorem, pursuant to a determination of the U.S. Department of Commerce.

The proposal in H.R. 4296 will not affect the classification and the duty status of any other fruit juices classified under Part 12 of Subpart A. It will not modify application of Headnotes 1 to 5 in Subpart A of Part 12, as to any non-citrus products. Further, implementation of this amendment will not affect the current tariff classification and present rates of duty applied to other imported citrus juice concentrate or fresh natural juice of any kind. Accordingly, it is believed that enactment of the proposed new tariff items will have no effect on commercial balances of trade in citrus products and will therefore not require compensation payments to the trading partners of the United States.

FCM does not hereby suggest the necessity of protective provisions in an attempt to restrict trade in citrus juice. Nor does FCM suggest that tariffs should be increased. On the contrary, the domestic industry has historically committed substantial resources to worldwide market development for citrus juices, and this commitment has benefited our trading partners as well as the United States industry. However, opportunistic manipulation of U.S. tariff classification provisions threatens to introduce increasingly disruptive influences into a highly sensitive market. The current tariff structure has functioned well, until recently, in assuring the availability of adequate supplies of orange juice for U.S. consumers from both domestic and import sources. The proposed amendment to the Tariff Schedules as set forth in H.R. 4296 is essential to close an anomalous classification loophole and reiterate the intent of Congress that concentrated juice, whether or not reconstituted, be classified under the appropriate provision.

For the foregoing reasons, Florida Citrus Mutual requests that the Subcommittee on Trade and the Committee on Ways & Means report favorably to the U.S. House of Representatives on H.R. 4296.

[By permission of the chairman, the following statement was included in the record:]

STATEMENT OF HOLIDAY JUICE LTD., WINDSOR, ONTARIO, CANADA

SUMMARY

Holiday Juice Ltd. respectfully submits that House Bill No. H.R. 4296 should not be enacted, at least in its present form, for the following reasons:

(1) The effect of the Bill will be to immunize U.S. juice processors against a degree of foreign competition which in all the circumstances is negligible;

(2) The proposed legislation should be restricted to the specific abuse at which it is aimed, namely the bulk importation of orange juice; it should not be cast (as it presently is) so broadly as to raise the tariff on orange juice and other citrus drinks in consumer or institutional sized packages which are not part of the preceived problem and have always been intended to attract the lower rate of duty;

(3) The present tariff of 20 cents a gallon on single-strength orange juice reconstituted from frozen concentrated juice is bound by GATT and any increase in the tariff will require the United States to compensate the GATT contracting parties affected thereby; and

(4) The legislation, as it would apply to Canadian-made single-strength juices reconstituted from concentrate, in consumer in institutional sized packages, would disregard the recent 40% reduction by Canada of the duty on U.S. juice products exported into Canada and would confer, in both the U.S. and Canadian markets, one more significant, and unnecessary, advantage on U.S. juice processors vis á vis their Canadian counterparts.

PURPOSE OF BILL H.R. 4296

House Bill No. H.R. 4296, along with House Bill No. H.R. 3398 which now incorporates Senate Bill No. S 1636, each propose to amend the Tariff Schedules of the United States by increasing the rate of duty on reconstituted orange juice from the present level of twenty cents (20¢) per gallon to thirty five cents (35¢) per gallon.

The stated purpose of these measures is a commendable one—to stop—"a handful of importers [who] are circumventing the intent of the tariff law by shipping highly concentrated orange juice to foreign trade zones in the United States or warehouses adjacent to the United States borders, and diluting the product there before shipping it out at the lower tariff." The importers responsible for the foregoing practice were juice bottlers and processors located within the United States.

The information recorded in U.S. reports statistics IM 146 clearly indicates that the administrative action requested by Senator Hawkins effectively eliminated the abuse. U.S. imports statistics under category Number 165-30 indicate that total volume of unconcentrated citrus fruit juices other than lime imported into the United States in 1980 totalled just under $2,000,000. In 1981, the total was $15,400,000. In 1982, the total of such exports had fallen to below $6,000,000.

The increase in imports in 1981 was the direct result of United States juice processors seeking to circumvent existing tariff laws in the manner indicated by Senator Hawkins. It appears clear, however, that by 1982, the administrative action requested by Senator Hawkins effectively eliminated the abuse, since imports fell by some $10,000,000 between 1981 and 1982.

The preview from Senator Hawkins comments that further legislative action is required. In our view, however, the legislative solution proposed is not the appropriate method for dealing with the problem

The application of this proposed legislation to legitimate importers of single strength juices in consumer sized packages unfairly immunizes United States juice processors from the possibility of any foreign competition whatsoever, most certainly is not what was intended when existing tariff agreements were negotiated, is inconsistent with U.S. obligations bound under GATT, and may indeed violate trade agreements made at the most recent round of GATT negotiations.

THE LEGISLATIVE SOLUTION IS DESIGNED TO FURTHER IMMUNIZE, UNNECESSARILY, DOMESTIC JUICE PROCESSORS FROM FOREIGN COMPETITION

The citrus industry in the United States is not one industry, but two industries. The citrus agricultural industry grows citrus fruits. It is an important basic industry to the United States and has traditionally enjoyed substantial tariff protection. The juice processing industry in the United States, however, is essentially a bottling and processing industry that reconstitutes citrus and other juice concentrates, bottles or cans reconcentrated juices and sells the same to retail and institutional customers.

Many owners of juice processing plants are also substantial owners of large citrus groves, and the relationship between the citrus agricultural industry and the juice processing industry within the United States has been a very close relationship. The juice processors within the United States have been almost totally immunized from competition because tariffs essentially aimed at protecting the agricultural citrus industry effectively precluded juice processors in other countries from competing effectively within the United States market.

While the purpose of the legislation in question is commendable, the specific legislative solution—"Once concentrate, always concentrate"—is far greater in scope than that required to remedy the problem as perceived, and in fact, anything required to protect the agricultural citrus industry of the United States.

The United States tariff rates have always differentiated between the rate of duty to be applied on concentrate and the rate of duty to be applied on single strength juice. The imports were from a favoured trading nation. The reason for the distinction has always been precisely the reasons set forth in the press release issued by Senator Hawkins on the 29th day of June, 1983 mainly because the differential ". . . helps to equalize the cost of importing orange juice regardless of the manner in which it is shipped. The law requires higher tariffs—thirty five cents (35¢) a gallon—on highly concentrated juice which is cheaper to ship, and lower tariffs—twenty cents (20¢) a gallon—on less concentrated juice which is a bulkier product and more expensive to ship." While the legislation is commendable, and perhaps it is necessary legislation, it is difficult to conclude that the primary cause for selecting the "once concentrate, always concentrate" approach was to totally insulate juice processing firms within the United States from the possibility of any foreign competition whatsoever, especially having regard to the de minimis level of foreign competition as previoulsy described.

THE LEGISLATION SHOULD BE REVISED TO AVOID UNFAIR ADVERSE EFFECTS ON UNITED STATES TRADE PARTNERS

In 1981, importers improperly circumventing the intent of the existing tariff law were obtaining a double advantage which clearly the legislation had not intended, namely, lower transportation costs, and lower tariffs.

Senator Hawkins, in our view, is correct when she states that the United States tariff schedule, when negotiated, intended to equalize the cost of importing orange juice regardless of the manner in which it was shipped—thirty five cents (35¢) a gallon on highly concentrated juice, which is less expensive to ship, and twenty cents (20¢) a gallon on single strength juice, which is a bulkier product, and more expensive to ship. The proposed amendment, however, is not consistent with what was intended when trade agreements were negotiated.

The original intent of the law could be frustrated by United States processors importing highly concentrated orange juice to foreign trade zones in the United States, or to warehouses adjacent to United States borders, and diluting the product there before shipping it out a the lower tariff, essentially only where such product is shipped into the United States in bulk. Such importers were able to dilute the juice, and transport it in bulk for something less than fifteen cents (15¢) per gallon, which was the amount saved on the import duties. They were then in a position to further process the juice in their own United States plants, and the cost of the raw material provided the difference, which was not too great would be something less than the cost of importing pure concentrate. If the administrative controls are in fact inadequate, the proposed legislation should be limited to bulk importation of orange juice, and not to orange juice and other citrus drinks in consumer or institutional sized packages. The adoption of the "once concentrate, always concentrate" principle being advanced by the proposed tariff legislation is not required to prevent circumventions of existing tariff law, nor is it required for the purpose of protecting the Florida orange growing industry.

Because of the substantial cost of transporting single strength juices, only juice processors located within Canada and Mexico can hope to compete even in a very small way with juice processors located within the United States. Packaging costs, handling charges, and transportation costs associated with transporting single strength juice in consumer sized packages, including the bulk created by the packages and containers, together with the twenty cents (20¢) per gallon duty already imposed on single strength orange juice when imported into the United States, has, as the imports statistics show, made it extremely difficult, in fact almost impossible, for juice processors in Canada or Mexico to compete with United States juice processors for the retail market.

The existing tariff rate appears all the more unjust, since it applies even when the juice processor is shipping into the United States juice reconstituted from concentrate purchased in the United States.

Frequently, our own plant acquires the packaging materials and concentrate from the United States, and is still required to pay twenty cents (20¢) per gallon upon importation of such products into the United States.

The existing distinction between the rate of duty, single strength juice, as opposed to the rate of duty on concentrate exists expressly for the purpose of recognizing the additional costs in shipping single juice to the consumer market in the United States. It is simply not correct to suggest that the proposed amendment would be consistent with what was intended when trade agreements were negotiated.

As far back as 1960, a comprehensive study was prepared by the United States tariff commission for presentation to the President and the Chairmen of the Committee of Ways and Means of the House, and the Committee on Finance of the Senate. In tracing the legislation as far back as 1922, we can find no reference whatever to the fact that the rate of duty applicable to single strength juice was intended to be restricted to freshly squeezed orange juice, a comment made by Congressman Ireland in the House of Representatives. Orange concentrate has been the dominant element in the orange juice processing industry for virtually fifty (50) years.

The reason for the lower rate of duty on single strength juice was quite simply to recognize that there were substantial increases in the costs of handling, packaging and shipping strength juice.

U.S. import statistics indicate that apart from the abuse complained of which was carried out substantially in 1981, the total imports into the United States of not concentrated citrus fruit juices other than lime never reached $2,000,000 per year (U.S. statistics IM 146 Number 165–30). We would presume that the report figures include all forms of citrus juice, not merely orange juice, and include any citrus juice reconstituted from concentrate purchased in the United States. It is impossible to suggest that the fifteen cent (15¢) per gallon reduction in the rate of duty on single strength juice when such juice is packaged in consumer sized packages could possibly constitute a threat to the Florida orange growing industry.

U.S. GATT OBLIGATIONS AND EXISTING TARIFF AGREEMENTS IN 1979

The present Tariff Schedules of the United States treat reconstituted orange juice as unconcentrated or single-strength juice which is dutiable at 20 cents a gallon, and this treatment and duty rate have been bound by GATT since 1947 and confirmed by the U.S. Customs Service to be so bound on two occasions since then. We understand that the United States Trade Representative, William E. Brock, is also of this view and so advised Senator Dole in a letter to Mr. Dole advising that the Administration did not support Senate Bill No. S. 1636. The increase of this duty to 35 cents a gallon would give rise, under GATT, to an obligation on the part of the United States to compensate GATT contracting parties prejudiced by such action.

Furthermore, as a consequence of the most recent round of GATT negotiations, the United States requested and obtained a reduction in the rate of duty imposed by Canada upon the importation of juice products from the United States. This reduction was solely for the benefit of juice processors located within the United States. The rate of duty was reduced from five percent (5%) of value to three percent (3%) of value.

Based upon current market prices, the present rate of duty charged by Canada on single strength juice imported from the United States is just less than seven cents (7¢) per gallon (see Exhibit 1 attached). Canadian juice processors must already pay twenty cents (20¢) per gallon when shipping their products into the United States. This rate of duty, together with the additional freight and handling charges, are the reasons imports of not concentrated citrus juices into the United States have always been at minimal levels, notwithstanding the fact that Canada has a very large juice processing industry.

By way of contrast, the very favourable rate of duty imposed by Canada has allowed the United States juice processing industry to ship into Canada in consumer sized containers, more than $60,000,000 worth of orange concentrate and single strength orange juice in 1982 alone. The total value of all Canadian imports from the United States of citrus products packaged in retail and institutional sized packages exceeds $70,000,000 United States dollars. When bulk concentrate is added to the foregoing figures, Canada's imports of orange and other citrus products from the United States exceeds the sum of $100,000,000 annually.

While United States juice processors as recently as 1979 sought to expand their ability to penetrate the Canadian market, they are now seeking to eliminate even the most minor intrusion by Canadian processors into the United States market. The real purpose, one suspects, for their urging upon their Congressional Representatives, the adoption of the "once concentrate, always concentrate" formula rather than differentiating between bulk shipments and shipments of single strength juice in consumer packages is to immunize their industry from any foreign competition whatsoever.

The intent to further enhance their competitive position appears all the more indefensible when one recognizes the dramatic proportion of the Canadian market for citrus products in consumer sized containers which United States processors already have compared to the almost immeasurable proportion of the United States market that Canadian processors currently enjoy. Moreover a substantial proportion of the single strength juice exported by Canada into the United States consists of product originating within the United States, and in respect of which Canadian juice processors are required to pay a twenty cent (20¢) per gallon duty, notwithstanding the fact that the place of origin was the United States.

When viewed from the position of a Canadian juice processor, and in fact interests of Canada as a trading partner of the United States, the position of the juice processors in the United States becomes all the more untenable when we read in the August issue of National Geographics that the United States intends to locate a plant within a free trade zone in Wyoming for the purpose of exporting orange juice made from Brazilian frozen concentrate into Canada to compete with Canadian packers. All such orange concentrate imported into the United States and then reexported by the juice processors will entitle such processors to receive a rebate of any duty paid to the United States. They will, therefore, be using Brazilian orange concentrate for the purpose of selling into the Canadian market rather than Florida concentrate. They will be manufacturing the product in the United States without duty, and then exporting that product into Canada at a duty rate which is one-third the present rate of duty Canadian processors must pay when importing their products into the United States.

In our opinion, further legislative action is not necessary in order to stop the abuse. If it is necessary, that legislation should be drafted so as to prohibit the specific abuse aimed at, but not interfere with the legitimate rights of processors in Canada and Mexico to export their products to the consumer market in the United States. From the point of view of our Company, substantial capital investment has been made in the expectation that because of its geographic location in Windsor, Ontario, it would be able to compete within a reasonable radius of Windsor with juice processors in the United States market.

COMPARATIVE ANALYSIS ON IMPORT DUTIES OF SINGLE STRENGTH ORANGE AND GRAPEFRUIT JUICE PRODUCT MANUFACTURED IN CANADA AND SOLD IN THE UNITED STATES VS. PRODUCT MANUFACTURED IN THE UNITED STATES AND SOLD IN CANADA

For purposes of this comparison, we will be comparing 64 oz. glass orange juice and grapefruit juice. The duty rate for products manufactured in Canada and sold in the United States is currently twenty cents (20¢) per gallon of single strength juice. It should be noted for ease and understanding that single strength juice in the readily drinkable form has approximately one (1) L/S (Pound Solid) per gallon of juice.

Orange and grapefruit juice made in Canada and sold in the United States is currently dutible at twenty cents (20¢) per gallon. The new proposed legislation would increase duty to thirty-five (35¢) cents per gallon under the assumption of "once concentrate, always concentrate". This would make it the same duty rate as concentrate, which is thirty-five cents (35¢) L/S, and again, 1 L/S approximates one gallon of single strength juice. The opposed legislation of course only deals with orange juice, not with grapefruit juice. It is unusual to differentiate betwen grapefruit and orange concentrate. In fact, it has never been done before. Presently, Florida has a tremendous glut of grapefruit juice, and prices are very severely depressed within the state of Florida on grapefruit concentrate, because of the substantial glut.

If a Canadian manufacturer makes a case of 64 oz. glass orange juice containing six units per case, that equals three gallons of product. Currently, the duty rate would be three gallons multiplied by twenty cents (20¢) per gallon, which is sixty cents (60¢) per case, United States funds.

In our particular case, that being Holiday Juice Ltd., we procure all of our grapefruit concentrate from the state of Florida. It is, therefore, a United States product. In addition, we buy our 64 oz. glass bottles, which come in corrugated boxes, and our labels from the United States. We bring these into Canada to be used in packaging our 64 oz. glass bottles of grapefruit juice for export to the United States. the only items of value added to the product in Canada are the cost of the caps on the bottles, the labour and overhead for processing the product, and, of course, the profit. Over seventy-five percent (75%) of the cost of the product is procurred in the United States. In spite of this, this is no allowance for an ad valorem duty on an item such as juice. United States tariff legislation does allow for ad valorem duty on processing, but only processing of metal, which must be further processed, again, in the United States. This would, of course, be the same case on orange juice, which is also currently at twenty cents (20¢) per gallon duty. It is clear that the intent of legislation is not only to protect the citrus growing industry in Florida, but, also to eliminate foreign competition in its entirety if at all possible.

If we use the example of 64 oz. orange juice, and we assume a selling price to a chain store of $10.00 per case on six units of 64 oz. product per case, we can then make calculations. Therefore, the following is the calculation:

Selling price (Canadian dollars)	$10.00
Less: Distributor's profit—estimated 15 percent (per case Canadian dollars)	1.50
Less: Freight charge of 6 percent (per case Canadian dollars)	.60
Net selling price—Canadian dollars	7.90
Estimated duty—3 percent rate (Canadian dollars)	.24
24¢ per case Canadian converted to United States at 1.235 equals (Canadian dollars)	.20
The duty rate for a Canadian manufacturer to ship product into the United States is currently (per case U.S. dollar)	.60
The duty rate for a U.S. packer to ship product into the United States is estimated to be (approximately .07 per/gallon) (per case U.S. dollar)	.20
Advantage to U.S. packer (approximately .13 per galion/ (per case U.S. dollars)	.40

In addition to the advantage of duty, the United States packers also have reduced costs of packaging materials, higher efficiencies of scale, and less expensive transportation costs, thus giving them substantially more of an advantage to compete in the Canadian market than a Canadian packer has to compete in a United States market.

Assuming that the duty rate is raised from twenty cents (20¢) per gallon of orange juice going into the United States to the proposed thirty-five cents (35¢) per gallon on this particular case at 64 oz. per unit, it would raise duty going into the United States to (per case U.S. dollars)	$1.05
Again, comparing this to the estimated duty of twenty cents (20¢) per case going into Canada, the United States packer has the advantage of (per case U.S. dollars)	.85

Plus, the other efficiencies available in the United States and not available in Canada. This is an unfair competitive advantage. Canada has all of the capacity required to pack the juice necessary for consumption.

McDermott, Will & Emery,
Washington, DC, March 30, 1984.

John J. Salmon, Esq.,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: This letter sets forth our opposition to H.R. 4296, now pending before the Subcommittee on Trade. If enacted into law, the Bill would increase the tariff on single-strength orange juice reconstituted from frozen concentrated orange juice (FCOJ).

The Bill would create two new tariff items (TSUS Items 165.27 and 165.29) and would subject reconstituted orange juice to a 35 cents per gallon tariff under Item 165.29. This product currently is subject to a 20 cents per gallon tariff.

SUMMARY

A. Imports of reconstituted orange juice are de minimis. They pose no threat to the domestic industry.

B. The current classification is bound under the 1947 GATT concession and cannot be changed without creating a GATT compliance problem, which may bring about Article XXVIII compensation claims, as well as other possible difficulties with our GATT trading partners.

C. As recognized in Ambassador Brock's letter, reconstituted orange juice is not a new product, but rather has been recognized in the TSUS itself since 1963. Under GATT practice, our GATT trading partners have a right of reasonable expectation that the historical tariff treatment will continue.

D. As Ambassador Brock pointed out, administrative remedies, such as Section 201 of the 1974 Trade Act, are available under U.S. trade laws to aid domestic producers faced with unfair or injurious competition from imports. If the proponents of this legislation believe they are being injured or threatened with future injury—which seems to us most unlikely given the facts set forth above—they should seek relief under already available procedures. The legislative change represented by H.R. 4296 would undercut our existing GATT obligations, create difficulties with our trading partners, and require compensation (or encourage retaliation) that would injure American producers or exporters in other industries. That is too high a price to pay for the removal of a non-existent "problem."

BACKGROUND

I. The current tariff is GATT-bound, and the Administration does not support this legislation, which would raise the tariff.

In the Tariff Schedules of the United States (TSUS), 19 U.S.C. § 1202, reconstituted orange juice clearly is treated as "unconcentrated," or single-strength, juice for tariff purposes, and is subject to a 20 cents per gallon duty. (TSUS Item 165.30.) The proposed legislation would increase that duty.

As shown by the November 9, 1983 letter from Ambassador Brock to Chairman Rostenkowski concerning an identical Bill (H.R. 3587), "(t)he Administration does not support this legislation." (We enclose a copy of Ambassador Brock's letter.)

Ambassador Brock pointed out that any increase in the tariff would be inconsistent with long-established United States obligations to our trading partners, which obligations have been bound under the General Agreement on Tariffs and Trade (GATT) since 1947. He stated that an increase in bound duties on this product "would likely subject the United States to claims for compensation in the form of reductions of U.S. tariffs on other products or retaliation in the form of increased tariffs affecting U.S. exports."

In his November 15, 1983 testimony before the Subcommittee on Trade, Mr. Hathaway of the USTR's office went into some detail about the Administration's reasons for its non-support. We invite your attention to the transcript of that testimony, which has not yet been printed and released.

II. Imports of reconstituted orange juice are negligible and pose no threat to the domestic industry.

As set forth below, we also believe that imports of reconstituted orange juice are de minimis, pose no threat to the domestic orange juice industry, and do not warrant a change in tariff treatment that would violate our international trade obligations.

The U.S. International Trade Commission analyzed the orange juice trade in its recent investigation, *Frozen Concentrated Orange Juice from Brazil* (US ITC Pub. 1406 July 1983). The staff report dealt with reconstituted orange juice in a single sentence, mentioning only that "(t)he petitioner has noted a trend toward the importation of FCOJ into States outside of Florida for conversion into reconstituted juice." (ITC Report at p. A-25.) The ITC staff drew no conclusion from that assertion by Florida Citrus Mutual, the petitioner there and a leading force behind the Bill under consideration. None of the ITC Commissioners mentioned the subject.

There was a sound basis for the ITC's lack of interest in the reconstitution issue. The Department of Agriculture's Horticulture and Tropical Products Office has advised us that the importation of reconstituted orange juice, and of single-strength orange juice as a whole, is negligible.

Virtually all the orange juice imported into the United States enters in the form of frozen concentrated orange juice. Indeed, Florida Canners Association statistics do not include data on the importation of single-strength orange juice at all; the figures are exactly the same for FCOJ as for total imports. Similarly, the Florida Citrus Processors Association Statistical Summary for the 1981-82 Season does not include data on reconstituted orange juice. In short, the Florida industry itself does not even collect statistics on this alleged "problem."

In all other economic and statistical reports or studies examined, including reports of USDA's Economic Research Service and Foreign Agricultural Service, and the 1981-82 Florida Department of Citrus Report, the importation of reconstituted orange juice is given little or no attention. The Commerce Department's statistics show 1981 imports of some 230 million gallons of FCOJ (measured in single-strength equivalent), and of only 6 million gallons of single-strength orange juice.

The importation of orange juice into the U.S. often is done to offset low U.S. production due to frost damage, and also is used to allow for larger exports by the U.S. to other consumer countries. The practice of importing foreign orange juice for eventual re-export, and the application by the U.S. industry for corresponding drawback payments, was recognized by the ITC and is a generally acknowledged practice; it is keyed to the two-price system that maintains a higher domestic price while discounting on the export market through use of imported (and re-exported) products. (See *Ward*, "The Economics of Florida's FCOJ Import and Exports: An Econometric Study" (1976), at pp. 97, 100.)

Statistics quoted in Ambassador Brock's letter, which may have come from the domestic industry, confirm this situation. We understand that imports from Canada of reconstituted orange juice (estimated by USTR at $1.1 million in 1982) consist primarily of a ready-to-drink single-strength product packaged in small retail and food service-sized containers and sold into regional U.S. markets near the border. This cannot be a serious problem for the U.S. industry, and if this market were foreclosed to the Canadian industry, one can readily anticipate a GATT issue, particularly given the Administration's own agreement, both in Ambassador Brock's letter and in USTR's November 15 testimony to the Subcommittee on Trade, that the duty rates on TSUS Items 165.30 and 165.35 are GATT-bound.

As for the $4.4 million of single-strength orange juice imported from Mexico in 1982, Ambassador Brock wrote that "it is not known how much of the $4.4 million of trade in the 'non-concentrated' category from that country is reconstituted and how much is single-strength orange juice." Thus even the Administration's most current statistics, whose source probably is the domestic industry itself, show that there is a negligible level of reconstituted orange juice imports.

For the above reasons, we recommend that H.R. 4296 not receive the approval of the Subcommittee on Trade, the Ways and Means Committee, or the House.

Respectfully submitted,

TERENCE ROCHE MURPHY.

Enclosure.

U.S. TRADE REPRESENTATIVE,
Washington, DC, November 9, 1983.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR DAN: This is in response to your request for comments on H.R. 3587, a bill to amend the Tariff Schedules of the United States (TSUS) "to establish equal and equitable classification and duty rates for certain imported citrus products." Under this bill, orange juice imported as "not concentrated" at 20 cents per gallon would include only orange juice in its natural form, while other orange juice products, including reconstituted juice, would be dutiable at 35 cents a gallon.

The Administration does not support this legislation.

The U.S. duty rates on TSUS item 165.30, orange juice, not concentrated and on 165.35, other citrus juice were bound under the General Agreement on Tariffs and Trade (GATT) at 20 cents and 35 cents per gallon respectively effective in 1947. The term "reconstituted" juice does not appear in the 1947 agreement. As of 1963, however, the term "reconstituted" juice does appear in the headnotes to part 12 of Schedule I of the TSUS. According to this headnote, "reconstituted" juice is classified under 165.30 at 20 cents per gallon. In addition, the U.S. Customs Service in 1964 and 1978 held that reconstituted orange juice produced by the addition of water to concentrate was properly classified under the provision for other citrus juice, not concentrated in 165.30 at 20 cents a gallon.

Significant trade in not-concentrated juice, much of which was in reconstituted form, began in 1980. Total U.S. imports in that year totaled $1.9 million, of which approximately $1.1 million was imported from Mexico and $100,000 from Canada. Trade in this item has steadily increased with total U.S. imports in 1982 estimated at $6.1 million with $4.4 million coming in from Mexico and $1.1 million from Canada. As Canada is not a producer of oranges, it is presumed that all of the juice entering the U.S. from Canada is reconstituted from concentrated juice which is imported primarily from Brazil. Mexico is a producer of oranges and it is not known how much of the $4.4 million of trade in the "not-concentrated" category from that country is reconstituted and how much is single strength orange juice.

When the United States binds a duty, it agrees not to increase the tariff above the current level in exchange for similar commitments by our trading partners on their tariffs. Enactment of this legislation would likely subject the United States to claims for compensation in the form of reductions of U.S. tariffs on other products or retaliation in the form of increased tariffs affecting U.S. exports. We cannot predict with precision the amount of compensation which might be claimed.

There are administrative remedies available under U.S. trade laws to aid domestic producers faced with unfair or injurious competiton from imports. An example would be Section 201 of the Trade Act of 1974. We prefer that this problem be considered in the context of the operation of these import relief programs.

Thank you for giving us the opportunity to comment.

Very truly yours,

WILLIAM E. BROCK.

H.R. 4316

To amend the Tariff Act of 1930 regarding same condition drawbacks and same kind and quality drawbacks, and for other purposes.

STATEMENT OF HON. BILL FRENZEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

H.R. 4316 permits the use of "substitution" under Same Condition Drawback law. The bill has been introduced to conform Same Condition Drawback law to manufacturing drawback law, which currently allows for substitution. Since it was my original intent to conform same condition to manufacturing drawback when I introduced Same Condition Drawback law 2 years ago, this bill in my judgment, represents a technical change to the law.

Same condition drawback law enables companies to obtain drawback on materials previously imported if they are exported in the same condition, or if incidental operations are performed on the materials, such as packaging, testing and adjusting. Substitution would allow companies to co-mingle inventories to avoid the necessity of keeping imported goods separate from fungible or commerically identical goods produced in this country. Under the bill, it is possible that a mix of imports and fungible goods could be exported, or totally fungible goods could be exported, up to the amount originally imported. The important consideration here is that only commercially-identical merchandise can be substituted, and only in quantities equal to that imported. No new drawback benefit is established by this bill. It permits businesses to use current law more efficiently and permit savings through simpler inventory control systems which should be passed on to the consumer. A safeguard has been written into the bill which prohibits other individuals from borrowing drawback benefits from another.

I have not heard of any opposition to this bill and hope my colleagues will support it.

STATEMENT OF E.I. DU PONT DE NEMOURS & CO.

E.I. du Pont de Nemours and Company, a Delaware corporation with offices located at 1007 Market Street, Wilimington, Delaware, is a diversified multinational corporation that enjoys the privilege of drawback. As such, we are interested in the promotion of efficient and effective drawback procedures.

At present, in order to insure a supply of imported, duty paid, merchandise eligible for same condition drawback under Section 1313(j) it is necessary to maintain a separate, and exclusively foreign originated, stock upon which to draw in order to avoid the taint of domestic or duty free merchandise.

In the interest of efficiency, it is advantageous to commingle imported and domestic merchandise of the same kind and quality in storage. However, merchandise withdrawn from a commingled common store containing both imported and domestic merchandise is not eligible for same condition drawback under 19 U.S.C Section 1313(j) because, it is reasoned, the merchandise actually being exported might not be duty paid merchandise.

United States commercial activities related to import/export operations, as well as the United States itself, benefit from the importation of merchandise which may be exported in its same condition. Those same benefits accrue even though the export may be domestic merchandise which has been used in lieu of the imported merchandise. Some of those benefits are as follows:

It will lead to an increase in operations to be done in the United States on goods which are imported and will be re-exported.

It will increase the profitability of exporting surplus inventory or goods needed to complete a foreign order.

The bill is likely to lead to increased U.S. employment.

Just as substitution of domestic for imported merchandise in manufacturing operations has won the approval of the Congress and the Customs Service, it seems equally reasonable to allow the same opportunity for Same Condition Drawback claimants. The revenue of the United States would not be further diminished than would be the case if claimants went to the unproductive and non-competitive practice of maintaining separate storage for imported and domestic merchandise. It is appropriate to treat both kinds of drawback the same, since the advantage to the United States and its exporters who compete in foreign market are the same in each case.

We, therefore, urge the approval of H.R. 4316 which will permit the use of domestic or duty free merchandise in lieu of the designated imported merchandise against which drawback for non-manufactured exports is claimed.

H.R. 4321

To repeal the existing suspension of duty on carob flour.

STATEMENT OF HON. NORMAN SISISKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman and members of the committee: I am submitting this statement in support of H.R. 4321, legislation to repeal a law passed in the last Congress which suspended the 15 percent ad valorem rate of duty on imported carob flour (P.L. 97-466). After reviewing the record of the proceedings in the last Congress which resulted in this law's enactment, I am convinced that the action of this committee and of the Congress was based upon misinformation or imcomplete information. If that information had been available, it seems clear that the commitee and the Congress would not have reported that part of the measure concerning carob flour.

A small business enterprise, Farmarco, Ltd., of Virginia Beach, Virginia, has operated for over 50 years, and is a principal producer of carob flour in the United States. The company employs 20 workers from my state. Until the enactment of P.L. 97-466 in the last Congress, Farmarco had developed annual sales of more than $1.5 million.

These facts were not presented to the committee or to the Congress prior to the enactment of new legislation in the 97th Congress. As a consequence, Farmarco has been adversely and unintentionally affected in a manner wholly inconsistent with the stated trade and tariff policies of the nation. Farmarco's sales of carob flour in the United States have suffered and prices of its finished products have been severely cut. As a result, Farmarco's very existence is threatened as are the jobs of its employees. It is for those reasons that In introduced this legislation.

The position which I am advancing is strongly supported by my colleague Representative William Whitehurst in whose district, Farmarco, Ltd., is located. In fact, Mr. Whitehurst deserves all due credit for bringing Farmarco's plight to our attention. He has worked long and hard to help resolve this legislative problem, and I am proud to have worked with him on this matter. Virginia's two United States Senators, John Warner and Paul Trible, also join in urging approval of this measure.

Finally, the United States Department of Agriculture, the United States Trade Commission, and the Department of State have presented testimony or comments to this committee indicating that they have no objection to the enactment of H.R. 4321. I urge its approval by this Subcommittee.

STATEMENT OF HON. G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr, Chairman and members of the committee, I am submitting this statement in behalf of legislation, H.R. 4321, which would correct a situation resulting from administrative error and oversight. As you know, legislation was enacted into law in the 97th Congress that established a temporary duty suspension on imported carob flour until December 13, 1984. During the process, leading up to enactment of the suspension on carob flour, Executive Comment was requested and received from the International Trade Commission, which failed to locate a domestic producer of carob flour, Famarco, Ltd., situated in my congressional district. This inadvertence directly led to the enactment of P.L. 97-446, since the Committee was unaware of the existence of any substantial domestic producer. Thus, Famarco was denied the opportunity to testify in opposition to the duty suspension, and the Committee considered the duty suspension bill unaware of the fact that there existed an active, large-scale domestic producer of carob flour.

Famarco, Ltd. is also submitting testimony which I believe fully explains the most unfortunate circumstances that led to the suspension of the duty on imported carob flour, so I will not be redundant here. After fully investigating the testimony, I am confident you will agree that their company has been unnecessarily devastated by this legislative oversight. I urge you in the strongest possible manner to give favorable consideration to a justified remedy, H.R. 4321, which would restore the duty on carob flour. I am also pleased to submit written testimony from Senator John Warner, who is keenly interested in the passage of this needed legislation.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Mr. Chairman, during its 97th session, the Congress enacted Public Law 97-446 which provided for a temporary duty suspension on imported carob flour through December of 1984. It is my understanding that this action was a result of an administrative oversight on the part of the International Trade Commission.

In light of the fact that carob flour producers in my state have been adversely affected by this action, I am pleased to support H.R. 4321, which would correct this error by re-enacting the carob flour duty.

Thank you.

STATEMENT OF BRUCE E. CLUBB. COUNSEL, FAMARCO, LTD.

I. INTRODUCTION

Mr. Chairman, my name is Bruce E. Clubb. I am a partner in the law firm of Baker & McKenzie and I make this a statement on behalf of Famarco, Ltd., a small, independent Virginia corporation. Famarco is the victim of gross injustice, resulting from legislation in the last Congress suspending the duty of carob flour. H.R. 4321, is designed to remedy that injustice by restricting the 15 percent MFN rate of duty on such imported processed carob flour.

II. THE PETITIONER

Famarco has been successfully producing carob flour,[1] in the United States, for over 50 years, and presently is the principal carob flour producer in this country. Famarco employs approximately 20 workers and has annual sales of over $1.5 million. Famarco officials estimate that in the recent past Famarco has supplied approximately 50 percent of the U.S. market.

III. COMPETING IMPORTS

The other half of the market is supplied for carob flour imported from Spain, and to a lesser extent from Italy, Greece and Cyprus. Until January 1983 the rate of duty on imported carob flour was 15% ad valorem. This duty partially compensated for the lower labor costs in the exporting countries, and competition between domestically produced carob flour and imports was brisk.

The importers and Famarco were aware of each other's existence. Not only did they compete for the same customers, but at one point they corresponded directly with each other. Thus, on April 17, 1979, Marvin F. Flowerman, President of one of the importers, wrote to Famarco stating "* * * we know you to be a producer of carob flour domestically." (A copy of this letter is attached as Exhibit A). Moreover, from 1977 to 1982 Famarco actually manufactured carob flour on a contract basis for J.R. Braun, one of the other importers. (A summary of this production is attached as Exhibit E.)

IV. MISREPRESENTATION OF THE FACTS

In 1981 a fiction began to be spread that there was no domestic production of carob flour (in effect, that Famarco did not exist) and that, therefore, the duty could be eliminated without injury to any U.S. interests.

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[1] Carob flour is produced from the bean pods of the carob tree, which is native to the Eastern Mediterranian region. Carob flour is used by the food flavoring, health food, baking, and confectionary industries as an extender for cocoa and chocolate, as well as a flavor in its own right. It is also used as a flavor-filler additived in tobacco products. Carob products do not contain the stimulants caffeine or theobromine, as do cocoa and chocolate, and thus it is used by peopel who may have allergic reactions to these stimulants or who prefer not to consume them. Carob flour also is much lower in calories and fat than cocoa. Carob candy bars, carob drinks, and carob ice cream are sold throughout the United States in health food stores. In addition, carob flour is used as an economical substitute for cocoa and chocolate flavoring in baking and confectionary products, particularly when the price of these ingredients rises.

Thus, Congressman Frenzel states that he was informed by a constituent that there was no domestic production of carob flour and that, as a result, he introduced a bill (H.R. 1988) to suspend the duty to zero. (See the letter dated May 11, 1983 from Congressman Frenzel to Congressman Whitehurst, a copy of which is attached as Exhibit C). Similarly, at the House hearings on the bill one of the importers appeared and stated that "For all practical purposes, carob flour is not manufactured in the United States and has not been for a number of years." [2]

The bill was referred to the Departments of Commerce [3] and State [4] and to the International Trade Commission [5] for comment. Those agencies, also apparently relying on information obtained from importers, similarly reported that there was no U.S. production of carob flour.

V. ELIMINATION OF THE DUTY

All of these reports were apparently based on information supplied by the importers who wanted the duty eliminated, and were only checked in a superficial way by the government agencies involved.[6]

Congress acted on the basis of the misinformation which was before it and passed the bill. Accordingly, beginning in January 1983 the duty on imported carob flour was suspended until December 31, 1984.

VI. EFFECT ON FAMARCO

Congress and the government agencies involved were not made aware of Famarco's existence, and Famarco was not informed that the bill was being considered. Instead, the first information to reach Famarco was when importers of processed carob flour began quoting substantially lower prices for that 1983 deliveries. After making several inquiries, Famarco officials discovered to their surprise that the 15 percent duty on processed carob flour had been suspended.

Mr. Chairman, Famarco has been badly injured by this ill-considered legislative action. During the period that the duty has been eliminated Famarco's sales in the U.S. market have been cut by 41 percent. Its work force has been reduced, and its very existence is now in jeopardy.

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[2] Statement of Paul M. Flowerman, House hearings, p. 271. Mr. Flowerman also stated that "Roasting raw carob produces smoke and odors difficult and costly to control under our EPA requirements. These factors make carob production in the United States uneconomic . . . ."

This statement is also untrue. Famarco has been producing carob flour in the United States since 1928, and has had no difficulty meeting EPA requirements.

[3] The Department of Commerce has no objection to the enactment of this bill. There appears to be no domestic cultivation of carob nuts or production of carob flour.

[4] The State Department reported:

The Department of State has no objection to enactment of the proposed legislation.

We understand there is no United States production of carob flour and that domestic users of such flour rely on imports to meet their requirements.

[5] The ITC reported that:

Structure of the domestic industry and domestic production.

The carob tree is not commercially grown in the United States and consequently there is no domestic production of the crude carob pod or of its seed, locust bean. Crude carob kibbels have been reportedly imported into the United States in small quantities by two firms and then roasted and ground into carob flour. These firms apparently manufactured only a small fraction of the domestic consumption of carob flour. The largest of these two firms was the El Molino Mills, Inc. of Los Angeles, California. El Molino Mills ceased domestic processing of crude carob into carob flour about two years ago and began importing the prepared carob flour for repackaging for retail distribution. The other firm which reportedly processed carob pods, the Springtree Corporation of California, apparently no longer exists or has inconsequential production of carob flour. There is no information available on the amount of domestic production of carob flour by these two firms. However, it is estimated that even at its peak, such production represented only a small fraction of domestic consumption.

U.S. imports, exports, and apparent consumption.

U.S. imports of carob flour are believed to account for all of the domestic consumption (exports of carob are believed to be negligible).

[6] Thus, the information supplied to the Subcommittee to the effect that there is no domestic production of carob flour is simply wrong. Just how wrong is shown by the ITC report which estimated that imports of carob flour fluctuated between $811,000 and $1.6 million in the period 1977-1980. During this same period Famarco's sales of domestically produced carob flour ranged from $1.3 to $1.4 million. Thus, Famarco's sales accounted for approximately 50% of the U.S. market during this period.

VII. H.R. 4321—A REMEDY

As soon as Famarco officials discovered that the duty had been suspended, they promptly contacted members of the Virginia Congressional delegation, and as a result, Congressman Sisisky has introduced H.R. 4321 to restore the 15 percent MFN rate of duty.

VIII. CONCLUSION

Mr. Chairman, Famarco submits that it is not necessary for this subcommittee to decide whether the misinformation was supplied to the subcommittee and to the government agencies as part of an innocent misunderstanding or a deliberate deception. It is only necessary that this subcommittee recognize (1) that it has been given misinformation; (2) that Congress acted on the basis of that misinformation; (3) that the parties who supplied the misinformation or who failed to supply available accurate information, have gained a significant competitive advantage as a result of the Congressional action; and (4) that a small independent United States company which has been a reliable employer for over fifty years has been and continues to be severely injured as a result of the Congressional action.

Mr. Chairman while under the provisions of H.R. 4556 of the 97th Congress (P.L. 97-466) the suspension of 15 percent duty on processed carob flour will expire automatically on December 31, 1984, that misguided legislative action (based upon misinformation) should be repealed promptly. The repealer should be made effective upon its enactment and the 15 percent tariff on processed carob flour should be restored at the earliest possible date.

STATEMENT OF HERBERT E. HARRIS II, COUNSEL, ON BEHALF OF P.L. THOMAS & CO.; J.F. BRAUN & SONS, INC.; HENKEL CORP.; AND EDWARD T. FUSCO, INC.

SUMMARY

P.L. Thomas & Co.; J.F. Braun & Sons, Inc.; Henkel Corporation; and Edward T. Fusco, Inc., importers of carob flour, oppose H.R. 4321 because it will disrupt trade and unnecessarily cause an increased price to consumers of an important dietetic product.

Advocates of H.R. 4321 import all of their carob in a processed form free of duty and supply less than 15 percent of the U.S. market.

H.R. 4321 would result in the imposition of a 15 percent duty on 85 percent of the carob flour supply, and permit the suppliers of the remaining 15 percent to increase their price to the disadvantage of the consuming public.

INTRODUCTION

This statement is presented on behalf of P.L. Thomas & Co.; J.F. Braun & Sons, Inc.; Henkel Corporation; and Edward T. Fusco, Inc., importers of carob flour.

H.R. 4321 was introduced on November 4, 1983, for the stated purpose of repealing the existing suspension of duty on carob flour provided for in item 903.69 of the Appendix to the Tariff Schedules of the United States.

We oppose H.R. 4321 because it would result in higher prices to consumers of carob products and provide an unfair advantage to certain domestic processors.

H.R. 1988, a bill to suspend the duty on carob flour until December 31, 1984, was introduced on February 23, 1981. The bill was favorably reported from the Ways and Means Committee on September 17, 1981, and included in an omnibus bill of noncontroversial tariff measures, H.R. 4566. That legislation passed the full House on October 13, 1981, and was referred to the Senate, Committee on Finance. Hearings on the matter were conducted by the Finance Committee in July 1982. The Committee reported H.R. 4566 to the Senate. The bill was passed by the Senate on December 19, 1982. On December 21, the Senate and House went to conference on H.R. 4566, and reported out a bill which included the carob provision in identical form to that which was introduced as the original bill. The conference report was approved by the House and by the Senate, and the bill was signed by the President on January 12, 1983. Pub. L. No. 97-446, § 123, 96 Stat. 2329, 2338 (1983).

In the nearly two year period from introduction of H.R. 1988 until the tariff bill was signed into law, no adverse comments were received as to the duty suspension on carob flour. Neither written statements nor oral testimony in opposition to the bill were presented in the course of hearings. In fact, no adverse comments were made during the full course of the legislative proceedings.

ALL CAROB IS IMPORTED IN PROCESSED FORM

All carob consumed in the United States is imported in processed form. The law was intended to prevent the burden of a 15 percent duty on carob flour from being passed on to the consumer. This seemed particularly appropriate in light of the fact that domestically processed carob flour, which makes up no more than 10 to 15 percent of the domestic market, is produced entirely from imported kibbled carob, a processed product which enters free of duty. Kibbled carob, incidentally, is valued at more than half the finished product cost.

H.R. 4321, therefore, is not designed to protect producers of a domestic product from import competition by repealing suspension of the 15 percent duty. Rather, it is designed to provide suppliers of no more than 15 percent of the U.S. market with an unfair advantage over their competitors. If passed, the bill would impose an unnecessary additional cost on the suppliers of the remaining 85 percent of the market. The cost would in turn be passed on to the consumer.

CONCLUSION

H.R. 4321 would provide an unfair competitive advantage to suppliers of a small percentage of the U.S. market to the detriment of suppliers of the vast majority of that market. Both groups of suppliers must rely on imported carob, be it in kibbled or flour form. Public policy is not served by erecting a trade barrier which requires consumers to pay an inflated price for carob in order to benefit one group of importers over another. This would be the inevitable result of H.R. 4321.

H.R. 4329

To extend until July 1, 1987, the existing suspension of duty on 4-chloro-3-methylphenol.

No comments received on this bill.

H.R. 4339

To amend the Tariff Schedules of the United States regarding the classification of certain articles of wearing apparel.

STATEMENT OF CARL H. PRIESTLAND, CHIEF ECONOMIST, AMERICAN APPAREL MANUFACTURERS ASSOCIATION, ON BEHALF OF AMERICAN FIBER TEXTILE APPAREL COALITION

SUMMARY

On behalf of the American Fiber/Textile/Apparel Coalition (AFTAC), which is a national coalition of Labor and Management organizations in the fiber, textile, and apparel industries in the United States, I am speaking in favor of HR 4339. HR 4339 closes a loophole which permits very substantial quantities of apparel to enter the United States at duty rates which are lower than intended by Congress. This problem was created because of tariff rate reductions on garments classified in sets which produced lower tariff rates than on the same garments classified individually. As these reductions, which were negotiated during the Tokyo Round, are implemented, incentive is increased for importers to bring in garments as sets and thereby avoid the higher duty applicable to individual garments.

This tariff evasion creates several problems. First, apparel is allowed to enter the country at a level of protection that is lower than that intended by the Congress and provided to the domestic apparel industry. Items entering at reduced tariffs lower the prices of imports and offset any productivity improvements which the domestic industry has made. Another problem is related to the fact that the proposed Harmonized Commodity Code, which will be implemented in a few years time, does not recognize most of the current set imports as sets. Thus, items now entering as sets will be subject to higher duty rates when the code is adopted. This will lead to compensation claims by those countries affected.

STATEMENT

Mr. Chairman, my name is Carl Priestland and I am Chief Economist for the American Apparel Manufacturers Association. I am speaking today on behalf of the American Fiber/Textile/Apparel Coalition (AFTAC). AFTAC is a national coalition of labor and management organizations in the fiber, textile and apparel industries in the United States. Members of the coalition are located throughout the nation and produce the vast majority of fiber, textile and apparel items made in this country. The attached list identifies the 21 member organizations of AFTAC.

During the 1981-82 recession, U.S. textile and apparel employment declined about 10 percent—200,000 jobs. As a result of the current sharp increase in imports—up 25 percent in 1983—we do not expect to regain many of those jobs. Imports in 1983 were 7.4 billion square yards—1.5 billion square yards from 1982. This 1.5 billion square yards represents the annual labor of 150,000 workers. H.R. 4339 is an important element closing a loophole which is permitting larger and larger quantities of apparel to enter the U.S. at lower than intended duty rates.

The language in H.R. 4339 is designed to correct a very serious problem we see emerging in the trade of apparel "sets. During the Tokyo Round, the method used to reduce tariff rates on apparel created lower duty rates on garments classified in sets than on the same garments classified individually. Since the beginning of the phase-in of apparel tariffs in 1982 the tariff rate on most sets is now lower than on most individual garments. As a result, imports of sets are currently increasing very fast.

In the first nine months of 1983, imports of apparel in sets increased 64 percent in equivalent square yards. During the same nine months, total apparel imports increased 21 percent. Since there is a very real incentive to shift to sets, the rapid rate of growth in imports of sets is not likely to change. Each year, as lower rates on sets are phased in, the incentive to shift into sets will accelerate.

The problem can only get worse as the volume of trade in apparel sets expands. Our concern with this volume is related to two problems that exploding trade in sets will generate. The first is the increased imports of apparel entering at lower duty rates will add to the already devastating flood of textile and apparel imports. Apparel imports increased by more than 500 million square yards in 1983 over 1982. As more imports enter through this loophole the damage to the U.S. industry and its workers can only worsen. Reduced tariffs increase the price gap and offset productivity improvements made domestically.

The second problem is related to the proposed conversion of the TSUS to the new Harmonized Commodity Code in 1987.

While the problem of an unintended price advantage for these imports is of concern now, the problems that are likely to occur when we shift to the Harmonized Code are equally important to us. Few, if any, of the current apparel set classifications will remain as sets in the new Code. Almost all garment lines now entering in sets will become subject to tariff rates applicable to the individual garments when the Code is adopted. If the current classification of sets is not corrected, the duty rate on garment sets in 1987 could be half of what the rates will be on individual garments. When the Code is adopted, our trading partners will request compensation for tariff increases which will result when apparel now imported in sets shifts to the higher duty individual tariff lines. This problem is clearly shown in the following example:

1. Before the 1982 phase-in of lower apparel tariffs, the tariff rate on a woman's non-ornamented woven cotton blouse and a woven cotton slack was the same, 16.5%.

2. In 1987 the rate on each of these items individually will be 16.5% (no reduction was made on these garments because of the high level of imports). 3. In 1987 the rate on a set containing a woven cotton blouse and a pair of slacks will be 8.0%, slightly less than one-half of the tariff rate on these same garments if imported separately. (See attached list of additional examples.)

To the best of my knowledge, there was no intention on the part of our government to create lower rates of duties on apparel in sets than on individual garments that may be included in a set. This situation was created during the Multilateral Trade Negotiations because tariffs on some garments were reduced more than on other garments. H.R. 4339 can prevent these problems and thus avoid the problem of compensation which will almost certainly require long, protracted negotiations in an area where there was never any intention to significantly change the duty structure. Further, in discussing the sets problem with U.S. Customs Service officials we were informed that a legislative approach such as H.R. 4339 would virtually eliminate the problems faced by Customs in classifying apparel sets.

APPAREL SETS: TARIFF HISTORY

Description	Category	TSUSA	Pre-MTN 1981	Duties 1983	Post-MTN 1987	Trade Imports (SYE) 6 Mos. 1982	Trade Imports (SYE) 6 Mos. 1983
WGI Cotton Coats	335	383.3075 Sets	21.0%	16.7%	8.0%	207	15,529
	335	383.2815 Regular	21.0%	19.5%	16.5%		
WGI Dresses	336	383.5088 Sets	16.5%	13.7%	8.0%	4,802	104,099
	336	383.4821 Regular	16.5%	15.0%	12.0%		
WGI Woven Blouses	341	383.5082 Sets	16.5%	13.7%	8.0%	55,912	312,548
	341	383.4705 Regular	16.5%	16.5%	16.5%		
WGI Trousers	348	383.5086 Sets	16.5%	13.7%	8.0%	99,324	465,844
	348	383.4747 Regular	16.5%	16.5%	16.5%		
WGI Wool Coats	435	383.7570 Sets	37.5/lb + 21.0%	25.0/lb + 19.7%	17.0%	378	53,892
	435	383.7210 Regular	37.5/lb + 21.0%	32.0/lb + 21.0%	21.0/lb + 21.0%		
WGI Knit Blouses	639	383.8663 Sets	25.0/lb + 32.5%	17.0/lb + 28.1%	3.0/lb + 19.2% (A)	1,100,490	1,638,750
	639	383.0004 Regular	25.0/lb + 32.5%	21.0/lb + 32.5%	13.0/lb + 32.5%		
M&B Woven Shirts	640	379.9639 Sets	25.0/lb + 27.5%	16.0/lb + 24.0%	17.0%	12,000	29,352
	640	379.9535 Regular	25.0/lb + 27.5%	21.0/lb + 27.5%	14.0/lb + 27.5%		
WGI Woven Blouses	641	383.9270 Sets	25.0/lb + 27.5%	16.0/lb + 24.0%	17.0%	217,442	1,281,786
	641	383.9010 Regular	25.0/lb + 27.5%	22.0/lb + 27.5%	17.0/lb + 27.5%		
WGI Sweaters	646	383.8665 Sets	25.0/lb + 32.5%	17.0/lb + 28.1%	3.0/lb + 19.2% (A)	114,338	847,394
	646	383.8073 Regular	25.0/lb + 32.5%	21.0/lb + 32.5%	13.0/lb + 32.5%		

(A) Rate becomes 14% as of January 1, 1988.

MEMBERS OF AMERICAN FIBER/TEXTILE/APPAREL COALITION

Amalgamated Clothing & Textile Workers Union.
American Apparel Manufacturers Association.
American Textile Manufacturers Institute.
American Yarn Spinners Association.
Carpet and Rug Institute.
Clothing Manufacturers Association of America.
Industrial Fabrics Association International.
International Ladies Garment Workers Union.
Knitted Textile Association.
Luggage and Leather Goods Manufacturers of America.
Man-Made Fiber Producers Association.
National Association of Hosiery Manufacturers.
National Association of Uniform Manufacturers.
National Cotton Council.
National Knitwear Manufacturers Association.
National Knitwear & Sportswear Association.
National Wool Growers Association.
Neckwear Association of America.
Northern Textile Association.
Textile Distributors Association.
Work Glove Manufacturers Association.

H.R. 4353

A bill relating to the tariff classification of salted and dried plums, and for other purposes.

HAWAII INTERNATIONAL SERVICES AGENCY,
Honolulu, HI, April 18, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: I am the administrator of the Hawaii International Services Agency which is the international trade office of the State of Hawaii. We support the enactment of H.R. 4353—relating to salted and dried plums. The bill will permit the continuation of at least 20 direct jobs in the State of Hawaii that would otherwise be established in Asia.

Twenty years ago, the U.S. Customs Service allowed Jade Food Products to begin importing brine-soaked and sun-dried plums into the United States at a 2 cent per pound tariff rate for further processing here. As a result of their ruling, Jade Food Products was able to build a business that now employs over 20 people.

In 1983, the Customs Service unilaterally imposed a 17.5 percent ad valoram rate on the plum, the same rate that is imposed on the finished product. As a result, Jade Food Products can now purchase the finished product in Asia for less than it costs to manufacture the product here. Thus, unless the tariff rate is rolled back, Jade Food Products would have no choice but to move its manufacturing, including the resulting jobs, to Asia.

All H.R. 4353 would do is restore the status quo. From such restoration, jobs would be preserved in Hawaii. For these reasons, I encourage you to pass H.R. 4353.

Very cordially yours,

THOMAS S. SAKATA, *Administrator.*

FUJIYAMA, DUFFY & FUJIYAMA,
Honolulu, HI, March 30, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: This firm represents Jade Food Products, Inc., a Hawaii corporation, at whose request Representative Heftel introduced H.R. 4353—relating to salted and preserved plums.

Over 20 years ago Jade Food Products, received permission from the United States Custom Service to import brine-soaked and sun-dried plums at a 2 cent per pound tariff for further processing in the United States. While the finished product could be bought in Asia, Jade Food Products wanted to manufacture it in the United States using American labor and, therefore, required the 2 cent per pound tariff. In fact, Jade Food Products was established on the permise that it would be able to import its materials at this rate.

Therefore, when the Custom Service unilaterally raised the rate of 17.5 percent ad valoram level in April of 1983, the very economic premise of Jade Food Products was removed. All H.R. 4353 does is to re-establish the prior condition which permitted Jade Food Products to exist by imposing the 2 cent per pound tariff on brine-soaked and sun-dried plums.

Jade Food Products presently imports these plums into the United States to manufacture flavored and preserved fruits. These plums are not grown in the United States. It manufactures these preserved fruits by first soaking the previously brined and dried plums in fresh water and adding various flavors. This process presently requires over 20 employees in the State of Hawaii.

Since the Custom Services raised the tariff rate, Jade Food Products estimates that it pays about $6,000 per month in additional tariffs. Because Jade Food Products is not a large corporation, this additional cash outflow has pushed the company to the brink of bankruptcy. The only recourse Jade Food Products has if the tariff rate is not reduced, would be to transfer its plant to Asia where cheaper labor could be employed. This would eliminate 20 jobs in the United States. Therefore, the economic question that is posed to the Committee is whether the difference between the 2 cents per pound duty and the 17.5 percent ad valoram duty is equivalent to the higher labor cost incurred by Jade Food Products in manufacturing the preserved plum in Hawaii.

In other words, H.R. 4353 directly encourages the establishment of jobs in the United States. If Congress continues to allow the importation of raw materials and finished products on an equal basis, then jobs will be created wherever the cost of labor is cheaper, i.e., Asia. We do not believe that this is a policy which Congress wishes to support. Indeed, it is our understanding that one of the purposes of tariffs is to equalize the cost of labor between the United States and developing nations. H.R. 4353 embodies exactly this type of policy. It encourages the creation of jobs in the United States, it neutralizes whatever advantage Asian manufacturers might have by employing cheaper labor in Asia, and it protects a domestic industry, Jade Food Products, from cheaper imports.

Again, Jade Food Products is not asking Congress to grant to it a windfall. It had operated under the proposed tariff scheduled for over 20 years and, although it has survived, the Company is by no means a large and wealthy entity. It has merely allowed the owners and employees of Jade Food Products to enjoy a decent standard of living.

If Jade Food Products cannot find relief to this problem, it will be forced to shutdown its factory. This will not only be a loss to the Company and its employees, but also a loss to the State of Hawaii and the United States. The policies contained in H.R. 4353 are deserving of Congressional support.

We stand ready to answer any further questions on this matter, thank you very much for your time and attention.

Very truly yours,

ROBERT L. CHAR,
Counsel, Jade Food Products, Inc.

SUMMARY OF TESTIMONY

1. H.R. 4353 merely re-establishes status quo which existed for over 20 years.
2. H.R. 4353 creates at least 20 direct jobs in the United States. Failure to pass H.R. 4353 will force domestic manufacturers of certain preserved fruits to move their operations to Asia.
3. H.R. 4353 creates a windfall for no one, but failure to pass it may result in bankruptcy of American manufacturers.
4. H.R. 4353 should be enacted.

STATEMENT OF DOUGLAS Q.L. YEE, VICE PRESIDENT, YICK LUNG CO., INC.

This statement is made by and on behalf of Yick Lung Co., Inc., a Hawaii corporation whose principal place of business is at 580 Dilligham Boulevard, Honolulu, Hawaii 96806, and whose telephone number is (800) 841-3611.

Yick Lung Co., Inc. manufactures, packages and distributes preserved fruits such as mangos, ginger, lemons and plums and other items in the United States and abroad. As a substantial part of its business, it imports, packages and sells prepared and preserved plums.

The proposed amendment to Subpart b of Part 9 of Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202) contemplates a lower tariff rate for plums which are imported "in brine and dried", as an exception to the higher tariff rate for plums which are "otherwise prepared or preserved." We believe that this amendment shall have a direct and unfair effect upon our operations and indeed upon industry in the United States with respect to the distribution of prepared and preserved plums in the United States.

The present tariff schedule distinguishes between plums "in brine" which are taxed at a rate of 0.1¢ per pound, "dried" plums which are taxed at a rate of 2.0¢ per pound and plums "otherwise prepared or preserved" which are taxed at a 17.5 percent ad valorem rate. Other sections of the tariff schedule relating to edible fruits such as olives, peaches, pears and pineapples, maintain the same distinction between fruits in brine, dried fruits and fruits which are otherwise prepared or preserved. The current interpretation of the present tariff schedule is that plums which have been salted and dried are properly classified as plums which have been "otherwise prepared or preserved," and, therefore, are taxable at the 17.5 percent ad valorem rate. *Hismoco (American) Co.* v. *United States,* 81 Cust. Ct. 32, CD 4762 (1978).

Bill No. H.R. 4353 apparently seeks to modify the present tariff schedule so that plums which have been prepared in brine and dried would be taxed at the same rate as plums which have only been dried. In other words, it seeks to carve a specific exception to the category of "prepared or preserved" for those plums which have been prepared or preserved by a salt and drying process. Plums prepared and preserved by this particular process would be taxed at a substantially lower rate than those prepared or preserved by other means.

This distinction is arbitrary and affords an unfair competitive edge to those companies which deal with salted, dried plums. Furthermore, there is no reason why salted, dried plums should be taxed at the same rate as plain dried plums when the former have clearly undergone further processing rendering them prepared and preserved.

The present tariff rates suggest the intention that a distinction be made between freshly imported fruits and prepared or preserved fruits. Under the present system, the special rates for salted fruits and dried fruits may have been established in part in recognition that salting and drying processes increase the shelf life of fruits accordingly reducing the importation costs of the same. Apparently, this reason for "processing" did not fall into the area of concern which the 17.5 percent ad valorem rate seeks to protect, such that salted fruits snd dried fruits are treated as variants of "fresh" fruits.

A reasonable line must be drawn between fresh fruits and their "variants", and fruits which have been otherwise prepared or preserved in order to maintain the integrity of the tariff schedule which taxes the latter at a substantially higher rate than the former. There is no compelling reason why salted, dried plums should be deemed to be in the nature of a "fresh fruit variant." They are, in fact, fruits which have been prepared and preserved.

As a general comment, there is no industry of significant size in the United States producing prepared and preserved plums which is in need of tariff protection.[1] Furthermore, the proposed amendment affords no protection to this limited industry as a whole. And, if adopted, it would give an unfair competitive edge to the company which imports salted, dried plums as part of their business practice. Companies, such as Yick Lung Co., Inc. which utilize other methods of practice, would be at a distinct disadvantage in the consumer marketplace.

We understand naturally that the company which has proposed this bill imports salted, dried fruits and has much to gain if it passes—a competitive edge in the industry.

We submit that the competition be returned to the market place.

Therefore, we feel that Bill No. HR-4353 introduced by Congressman Cecil Heftel should be rejected.

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[1] As an aside, Yick Lung Co., Inc. presently imports lines of preserved mangos, lemons and ginger which have been classified under the generalized system of perferences/Form A (hereinafter "GSP") which provides for their import duty free under certain conditions. The GSP system was designed in part to assist lesser developed countries in the exportation to the U.S. of certain items. We feel that the GSP system should apply to the importation of plums, thereby making it consistent with the treatment of such other preserved fruits.

H.R. 4378

To suspend the duty on sulfaquinoxaline until the close of Dec. 31, 1986.

STATEMENT OF HON. COOPER EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today in support of the bills HR 4378 through HR 4382 and HR 4899, which propose to suspend tariff duties on certain sulfa drugs. These are sulfaquinoxaline, sulfanilamide, sulfaquanidine, sulfamethazine, sulfathiazole, and acetylsulfaguanidine.

These bills propose the suspension of duties on six sulfa drugs which are important to the American agricultural community. The drugs are used primarily by the livestock and poultry industry directly in the treatment of animal infection or indirectly in the production of other drugs which treat infection. I believe it is in the best interest of American farmers for us to suspend the duties on these drugs.

It is my understanding that there is currently no domestic production of any of these products and that each domestic company that has the capacity to manufacture these drugs is also an importer of them. There would be no adverse effect on the domestic industry and it is my understanding that no U.S. manufacturer has opposed this legislation.

There is little reason to subject these sulfa drugs to import duties when the imports are not in competition with domestic products. This results in higher prices to the American farmer and ultimately to the consumer, in the cost of beef and poultry. The International Trade Commission has estimated that the customs revenue losses for each of these drugs would be less than $50,000 over the three years covered in the legislation, 1984-1986. Clearly, the benefits of this legislation outweigh the estimated revenue loss.

Mr. Chairman, I encourage you to favorably consider this legislation which is noncontroversial and which will benefit both American industry and consumer. Thank you.

STATEMENT OF CLARUS M. GALLOWAY, MATERIALS MANAGER, SALSBURY LABORATORIES, INC.

SUMMARY

Mr. Chairman, Salsbury Laboratories, Inc., favors passage of House Bills H.R. 4378, H.R. 4379, H.R. 4380, H.R. 4381, H.R. 4382 and H.R. 4899 which would suspend the tariff on sulfaquinoxaline, sulfanilamide, sulfagunaidine, sulfamethazine, sulfathiazole and acetylsulfaguanidine. We, along with many other companies, feel that passage of these bills represent a realistic benefit to American manufacturers producing and marketing sulfa products to agriculture and to livestock producers in reduced cost—all within the framework of world supply and demand.

Sulfa drugs are of prime importance to the livestock and poultry industries and there is virtually no domestic production of these essential veterinary health products. Also, due to environmental problems and costs associated with their manufacture, future domestic production is quite unlikely.

The passage of these Bills will make substantial savings possible for American poultry and livestock producers in their battle to realize a profit and ultimately savings for the consumer in better prices for meat and eggs. High energy and grain costs have already increased the cost of producing meat and eggs for the American consumer. To continue these tariffs on animal health products that help place food on the consumer's table around the world, we feel, is unjustified.

Suspension of these tariffs will provide a direct pass-through savings on sulfaquinoxaline, sulfanilamide, sulfathiazole and sulfamethazine to the benefit of poultry and livestock producers and consumers. In addition, the suspension of tariffs on sulfaguanidine, acetylsulfaguanidine and sulfathiazole will provide conversion opportunities for U.S. companies, increasing American employment vs. chemical manufacturers in other countries.

In summary, it is our contention, along with the support of many other companies serving the sulfa market, that passage of these sulfa Bills will allow American manufacturers to offer more economical sulfa-bearing products to the agricultural industry. The subsequent result being lower priced end-products (meat & eggs) to the ultimate consumer. At the same time, passage of these Bills will serve to stimulate American manufacture of end-use sulfa drugs, manufacture now being done in other countries.

STATEMENT

Mr. Chairman, by way of introduction, Salsbury Laboratories, Inc., is a small to medium sized company, which has a long-term commitment to supplying products and services to the poultry and animal health industries. Quality products at competitive prices have enabled the company to earn the confidence of poultry and livestock raisers in their efforts to produce meat and eggs at a profit.

Sulfa drugs are of prime importance to the livestock and poultry industries and there is virtually no domestic production of these essential veterinary health products. (Note attached "Sources of Manufacture.") Also, due to environmental problems and costs associated with their manufacture, future domestic production is quite unlikely.

Salsbury is but one of many companies that favor passage of H.R. 4378, H.R. 4379, H.R. 4380, H.R. 4381, H.R. 4382 and H.R. 4899 because we feel that they represent cost reductions of great benefit to American manufacturers producing and marketing sulfa products to agriculture—within the framework of world supply and demand. Many of our competitors have written to the chairman of this committee, The Honorable Sam Gibbons, voicing strong support for this legislation. We must, I feel, call your attention to the fact that those letters reference House Bills 2921 through 2925 which are identical to present House Bills H.R. 4378 through H.R. 4382.

Acetylsulfaguanidine (H.R. 4899), like sulfaguanidine is only an intermediate chemical (the precurser to sulfaguanidine) used in the manufacture of sulfamethazine. It, like sulfaguanidine, has no approved medicinal uses. H.R. 4899 is needed primarily due to a world shortage of sulfaguanidine. Only Yugoslavia and China presently manufacture sulfaguanidine and they do not offer it for sale. They prefer to upgrade to sulfamethazine and demand a higher value added price. As an example, sulfamethazine prices, due to controlled availability, have doubled over the past year.

The passage of these Bills will make substantial savings possible for American poultry and livestock producers in their battle to realize a profit and ultimately savings for the consumer in better prices for meat and eggs. High energy and grain costs have already greatly increased the cost of producing meat and eggs for the American consumer. To continue these tariffs on animal health products that help place food on the consumer's table around the world, we feel, is unjustified.

Suspension of the tariffs is not a guarantee that prices for the sulfas will stay at or drop below their present levels. However, suspension of these tariffs will allow American manufacturers to purchase these sulfa products on the world market without adding the burden of high tariffs to the purchase price. The animal health business is highly competitive and for this reason we are confident that any duty savings will work to an advantage for both the farmer and the consumer.

Through a recent survey the administration sampled the chemical industry, particularly those with an interest in the sulfa market, and found a response favoring the passage of these Bills. Consequently these Bills do have administration support.

We have been in contact with other suppliers (as indicated by earlier reference to letters of support) of sulfa drugs to the poultry and animal health industry. Their support, as is ours, is based on the strong hope that sulfa-bearing products can be supplied to the poultry and livestock industry from a more competitive position.

Suspension of these tariffs will provide a direct pass-through savings on sulfaquinoxaline, sulfanilamide, sulfathiazole and sulfamethazine to the benefit of poultry and livestock producers and consumers.

In addition, the suspension of tariffs on sulfaguanidine, acetylsulfaguanidine and sulfathiazole will provide conversion opportunities for U.S. companies, increasing American employment vs. chemical manufacturers in other countries.

Acetylsulfaguanidine and sulfaguanidine will be converted to sulfamethazine and sodium sulfamethazine. Sulfathiazole is a widely used sulfa drug in the livestock and poultry industries. Sulfathiazole and its sodium salt are used in near equal volume in the industry. Presently, substantial quantities of sulfathiazole are converted to sodium sulfathiazole in west European countries. Suspension of sulfathiazole duties will encourage conversion by American industry at a competitive edge over sodium sulfathiazole converted in other countries.

In summary, it is our contention, along with the support of many other companies serving the sulfa market, that passage of these sulfa Bills will allow American manufacturers to offer more economical sulfa-bearing products to the agricultural industry. The subsequent result being lower priced end-products (meat & eggs) to the ultimate consumer. At the same time, passage of these bills will serve to stimulate American manufacture of end-use sulfa drugs, manufacture now being done in other countries.

SOURCES OF MANUFACTURE

H.R. 2921—Sulfaquinoxaline

Sulfaquinoxaline is produced only in England and Poland, but has in past years been produced in Italy and the U.S. Domestic manufacture (Merck & Co.) was discontinued approximately five (5) years ago due to the make vs. buy economics. GSP treatment was granted to Yugoslavia in March of 1983, but it is doubtful that they have ever actually produced this product.

H.R. 2922—Sulfanilamide

Sulfanilamide is produced in Romania, China, Poland, Yugoslavia (receives GSP treatment), Japan and small quantities in India. There has been no domestic manufacture within the past five (5) to ten (10) years, due to U.S. producers inability to be competitive. Previous U.S. producers were Merck & Co. & Salsbury Laboratories.

H.R. 2923—Sulfaguanidine

Sulfaguanidine is produced in China, Poland and Yugoslavia (received GSP treatment from Yugoslavia). Yugoslavia, however, exports very little as they prefer to upgrade to sulfamethazine. There has been no domestic material available for several years, again, for reason of inability to compete. There is however, considerable quantities of Sulfaguanidine imported into the U.S. & converted to Sulfamethazine and Sodium Sulfamethazine.

H.R. 2924—Sulfamethazine

Sulfamethazine is available from many countries, most of which buy the Sulfaguanidine & convert to the Sulfamethazine. Totally basic producers are limited to China, Poland and Yugoslavia (Yugoslavian material received GSP treatment). Countries that only convert Sulfaguanidine to Sulfamethazine are Spain, Romania, India (small quantities), Denmark, Mexico, Egypt, Czechoslavakia and the U.S. (at least three U.S. companies).

H.R. 2924—Sulfathiazole

Sulfathiazole is produced in Poland and China. Yugoslavia received GSP treatment & does have the capability to produce, but is not a consistant producer. Sulfathiazole has not been produced domestically since 1967, when Merck & Co. discontinued manufacture due to inability to compete. Several U.S. companies purchase Sulfathiazole for conversion to Sodium Sulfathiazole.

H.R. 4379

To suspend the duty on sulfathiazole until the close of Dec. 31, 1986.
See comments of Salsbury Laboratories, Inc., at p. 269.

H.R. 4380

To suspend the duty on sulfanilamide until the close of Dec. 31, 1986.
See comments of Salsbury Laboratories, Inc., at p. 269.

H.R. 4381

To suspend the duty on sulfamethazine until the close of Dec. 31, 1986.
See comments of Salsbury Laboratories, Inc., at p. 269.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 29, 1984.

Mr. JOHN SALMON,
Chief Counsel, House Ways and Means Committee, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: It is my understanding that H.R. 4381, a bill to suspend the duty on sulfamethazine until the close of Dec. 31, 1986, was introduced by Rep. Frenzel at the request of a constituent, with the understanding that the chemical was not produced domestically.

Recently, it has come to my attention that Napp Chemicals Inc., a manufacturer of bulk pharmaceuticals in Lodi, New Jersey, produces sulfamethazine. In 1983 they produced over 20,000 kilos of sulfamethazine, and their production level of the chemical is expected to be even greater this year.

To lift the duty of foreign produced sulfamethazine would only serve to reduce the competitiveness of Napp Chemicals, leading to a loss of American jobs to foreign competitors. When you review the written testimony concerning H.R. 4381, I sincerely hope you consider the adverse impacts lifting the duty on sulfamethazine may have in this country.

Thank you for your consideration and please contact me if I can be of any assistance.

Sincerely,

ROBERT G. TORRICELLI,
Member of Congress.

NAPP CHEMICALS INC.,
Lodi, NJ, March 28, 1984.

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: Napp Chemicals, Inc. is a manufacturer of bulk pharmaceuticals and we employ between 90–100 people at our plant in Lodi, N.J. We have manufactured and sold Sulfamethazine for the past 18 years. During 1983 we manufactured and sold more than 20,000 kilos of Sulfamethazine and already in 1984 we have manufactured and sold more than 9,000 kilos.

We have consistently been faced with severe import price competition under the present duty status. We feel certain that the suspension of duty on this compound would eliminate any possibility of future manufacture of the product by us in the U.S.

We hope the Committee will take into consideration the serious effect that the above would have on the business of Napp Chemicals, Inc.

Respectfully submitted,

HOLBROOK BUGBEE,
Executive Vice President.

H.R. 4382

To suspend the duty on sulfaguanidine until the close of Dec. 31, 1986.

See comments of Hon. Cooper Evans at p. 269, and Salsbury Laboratories, Inc., at p. 269.

H.R. 4443

To continue until the close of June 30, 1989, the existing suspension of duties on certain forms of zinc.

See also comments of Independent Zinc Alloyers Association at p. 335.

STATEMENT OF THE LEAD-ZINC PRODUCERS COMMITTEE

Summary

The Lead-Zinc Producers Committee supports enactment of H.R. 4443 to continue for five years the current duty suspension on imports of zinc ores and concentrates, and other zinc-bearing materials used by domestic zinc producers as raw materials in the production of zinc metal.

The bill is needed to assure domestic zinc smelters and refiners continued access to raw materials on a basis competitive with that available to foreign producers. U.S. zinc mines cannot completely meet the raw material needs of U.S. zinc smelters and refiners. Domestic zinc smelting and refining operations, which have already been seriously injured by high levels of imports of zinc metal, would be further harmed by the reimposition of duties on raw materials, expecially since competitors in foreign countries are not charged similar duties on their imports of such materials. Domestic zinc mines can sell virtually all production to domestic smelting and refining operations and, therefore, will benefit from any action taken to enhance the viability of the U.S. zinc smelting and refining industry.

STATEMENT

This statement is submitted on behalf of the member companies of the Lead-Zinc Producers Committee in support of H.R. 4443, which would continue for five years the current duty suspension on imports of zinc ores and concentrates, and other materials used by domestic zinc producers as necessary raw materials in the production of zinc metal.[1]

The Lead-Zinc Producers Committee is comprised of four U.S. producers of primary zinc who account for most of the primary zinc output in the United States. The members are:

AMAX Lead & Zinc Incorporated, 7733 Forsyth Boulevard, Clayton, Missouri 63105.

ASARCO Incorporated, 120 Broadway, New York, New York 10271.

The National Zinc Company, West 11th Street, Bartlesville, Oklahoma 74003.

St. Joe Minerals Corporation, 7733 Forsyth Boulevard, Clayton, Missouri 63105.

The Committee is submitting a separate statement in opposition to H.R. 5010 which would make permanent the present duty-free treatment for the materials covered by H.R. 4443 rather than extending for five years the suspension of the duty on these materials. More importantly, H.R. 5010 would provide duty suspension until the end of 1987 of unalloyed zinc metal, and item not covered by H.R. 4443 and which is the principal product of the domestic zinc industry.

The Lead-Zinc Producers Committee urges continuation of the present suspension of duties on zinc ores, concentrates, and other materials covered in H.R. 4443. This measure would continue through June 30, 1989 the duty suspension originally enacted in Public law 94-89, of August 9, 1975 and subsequently extended in 1979. The present suspension of duties expires on June 30, 1984.

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[1] Zinc-bearing ores and concentrates (TSUS 602.20), zinc dross and skimmings (TSUS 603.30), other zinc materials (TSUS 603.49, 603.50, 603.54, and 603.55), and zinc waste and scrap (TSUS 626.10). These are now classified in Schedule 9 of the Tariff Schedules as TSUS911.00 for zinc ores and concentrates, TSUS 911.01 for zinc dross and skimmings, TSUS 911.02 for other zinc-bearing materials, and TSUS 911.03 for zinc waste and scrap.

Imports of these materials are important because U.S. zinc mines, even when operating at full capacity, cannot produce sufficient ores and concentrates to meet the raw material needs of U.S. zinc smelters and refiners. U.S. zinc mine production in 1983 fell to only 60 percent of its level in 1975 when the duty suspension on ores and concentrates was first enacted. The depressed condition of U.S. zinc mine operations, therefore, in effect requires U.S. smelters and refiners to supplement domestically-mined ores and concentrates with imported raw materials in order to operate at efficient levels of capacity utilization.

U.S. zinc smelters and refiners need continued access to zinc ores and concentrates at world market prices without the additional burden of a U.S. import duty. Prior to the enactment of the duty suspension, the United States was the only major zinc metal producing country which imposed a tariff on these raw material imports. This tariff placed U.S. zinc smelters and refiners at a competitive disadvantage in the acquisition of these materials. while other problems facing domestic zinc smelters and refineries are of great significance, continuation of this suspension of duties is important to the industry. Had the tariff suspension not been in place during 1983, U.S. zinc smelters and refiners would have had to pay nearly $680,000 in duties on zinc ores and concentrates, and related materials even considering that 28 percent of the 1983 imports entered duty-free under the provisions of the Generalized System of Preferences (see Table 1). Failure to continue the suspension would reimpose duties (equal to about 0.53¢ per pound of contained metal) and further compound the difficult financial problems of zinc producers. This additional burden would come at a time when the industry is beginning to emerge from its severely depressed state during the recent recession.

U.S. imports of zinc ores and concentrates, and related materials amounted to 81,806 short tons of zinc content in 1983. This import level is little changed from the 1982 recession level and is still only 32 percent of the 255,836 tons of imports in 1981 (see Table 2). U.S. imports of zinc ores, and concentrates, and related raw materials should increase considerably as the U.S. recovery continues and particularly as ASARCO's Corpus Christi, Texas, zinc refinery recently resumed operations after a 16-month shutdown. U.S. imports of these raw materials are supplied mainly by Canada, Mexico, and Peru, which together accounted for 77 percent of total imports in 1983.

Continuation of the suspension of duties provided for by H.R. 4443 is important to domestic producers of zinc metal. The health of the U.S. zinc smelting and refining industry is, in turn, crucial to the health of the U.S. zinc mining industry. Continuation of the duty suspension on zinc ores and concentrates, by helping the smelters and refiners, also helps domestic mines. These mines have traditionally been highly dependent on sales to the domestic industry. Three of the member companies of the Lead-Zinc Producers Committee are themselves vertically-integrated zinc producers and operate zinc mines. Currently zinc mining takes place in a number of states including Tennessee, Missouri, New Jersey, Colorado, Pennsylvania and New York.

During the deliberations related to Congressional consideration of the 1979 extension of the duty suspension, no objections to the measure were voiced from any source. At that time, the Administration supported the bill on the grounds that the tariffs aided no domestic industry and that their continued suspension would have no adverse effect on any industry. In fact, the Administration concluded that the competitive position both at home and abroad of U.S. smelters and refiners would be seriously threatened should such duties be reimposed. These factors are equally applicable today.

For domestic producers of zinc metal, the suspension means economical access to a raw material in short supply and permits smelters to operate at efficient levels. For smelter and refining workers, the duty suspension means jobs. For the U.S. economy, it means a more viable domestic industrial base.

The lead-Zinc Producers Committee strongly urges early enactment of H.R. 4443.

Table 1

U.S. IMPORTS OF ZINC ORES, CONCENTRATES, AND OTHER MATERIALS, 1983: QUANTITY, VALUE, DUTY RATE, AND COLLECTIBLE DUTY*

	Quantity (Pounds of Zinc Content)				
	Total	Of Which Non-GSP	Value ($)	Duty Rate	Collectible Duty* ($)
Zinc Ores & Concentrates					
602.2012	12,778,406	9,241,337	$2,044,739	0.48¢/lb. on zinc content	$44,356
602.2022	126,216,540	96,370,579	$14,438,578	"	$462,577
602.2032	179,294	179,294	$49,173	"	$860
602.2042	60,193	0	$15,438	"	$0
	139,234,433	105,791,210	$16,547,928		$507,793
Zinc Dross & Skimmings					
603.3000	11,740,136	11,168,843	$2,708,701	0.67¢/lb. on gross weight	94,498
Zinc-Bearing Materials					
603.5020	1,392,112	326,473	$419,773	0.48¢/lb. on zinc content	$1,567
603.5030	2,608,454	2,608,454	$605,457	"	$12,521
603.5520	38,680	38,680	$5,006	"	$186
	4,039,246	2,973,607	$1,030,236		$14,274
Zinc Waste & Scrap					
626.1000	8,599,077**	8,599,077	$1,675,711	3.7% ad valorem	$62,001
Total	163,612,892	128,532,737	$21,962,576	--	$678,566

* Collectible duty is the estimated duty that would have been paid if there had not been a duty suspension in effect.

** Gross weight.

Source: U.S. Department of Commerce import data and the Tariff Schedules of the United States.

Table 2

U.S. IMPORTS OF ZINC ORES, CONCENTRATES, AND OTHER MATERIALS 1/ FROM SELECTED COUNTRIES AND TOTAL, ANNUAL 1978-1983

(in pounds of contained metal)

	1978	1979	1980	1981	1982	1983
Canada	168,724,480	37,936,108	257,960,979	420,796,196	69,655,820	50,616,118
Mexico	3,216,144	30,634,391	30,361,479	46,939,923	46,291,210	48,169,059
Honduras	28,970,317	29,504,068	15,500,110	10,130,090	13,984,742	25,973,111
Peru	18,993,696	65,470,831	88,572,285	64,100,240	13,686,322	19,525,688
Federal Republic of Germany	14,408,181	17,199,603	6,424,144	20,900,784	17,560,441	15,775,738
Australia	3,001,532	110,040	19,361,550	4,330,365	6,622,187	1,891,704
Other Countries	20,893,012	29,110,128	538,081	4,474,135	1,021,446	1,661,474
Total	258,207,362	209,965,169	418,718,628	571,671,733	168,822,168	163,612,892

1/ Includes TSUSA numbers 602.2012-602.2042, 603.3000, 603.4900, 603.5020-603.5030, 603.5400, 603.5520, and 626.1000.

Source: U.S. Department of Commerce data, IM146 and IM145X.

H.R. 5010

Summary

The Lead-Zinc Producers Committee strongly opposes H.R. 5010 for the following reasons.

With regard to making permanent the present duty suspension for zinc ores and concentrates and other zinc-bearing materials, the United States should not eliminate these duties unilaterally. The U.S. may wish to negotiate their reductions for trade concessions at some future time. Moreover, the current duty suspension has been working well since first instituted in 1975.

Representative Jones has already introduced H.R. 4443 which continues the duty suspension on the above items for five years. We support this approach.

Our major concern with H.R. 5010 is section 3 which suspends the duty on unalloyed zinc metal. This is the principal product of the domestic zinc industry. If this provision is enacted into law it would cause serious harm to the domestic zinc industry.

U.S. duties on unalloyed zinc metal imports are substantially lower than those of other industrialized countries. Suspension of the duty on unalloyed zinc metal would divert world exports of this product to the U.S. market.

The independent zinc alloyers who support this legislation are themselves protected by a duty of 19 percent on imports of alloyed zinc, the highest duty of any metal or mineral in the U.S. Tariff Schedules.

The U.S. needs its own viable primary zinc industry for economic and security reasons. Passage of H.R. 5010 could jeopardize the future viability of the industry.

A healthy domestic smelting and refining industry is in the best long-term interest of zinc-consuming industries. The elimination of the duty on unalloyed zinc would work directly against this important interest.

This statement is submitted on behalf of the Lead-Zinc Producers Committee in opposition to H.R. 5010. This bill would do two things. First, it would make permanent the present duty suspension for zinc ores and concentrates and other zinc-bearing raw materials [1] used by domestic zinc producers as raw materials in the production of zinc metal. Second, it would suspend the duty on unalloyed zinc metal [2] for approximately 3½ years, until the end of calendar year 1987.

The Lead-Zinc Producers Committee is comprised of four U.S. producers of primary zinc who account for most of the primary zinc output in the United States. The members are:

AMAX Lead & Zinc Incorporated, 7733 Forsyth Boulevard, Clayton, Missouri 63105.

ASARCO Incorporated, 120 Broadway, New York, New York 10271.

The National Zinc Company, West 11th Street, Bartlesville, Oklahoma 74003.

St. Joe Minerals Corporation, 7733 Forsyth Boulevard, Clayton, Missouri 63105.

There are several reasons for the Committee's opposition to this legislation.

With regard to making permanent the present duty suspension for zinc ores and concentrates and other zinc-bearing materials, we see no need for the United States to eliminate this duty unilaterally. The duty suspension on these products has been working well since first instituted in 1975. It may be that at some time in the future in another round of multilateral trade negotiations the U.S. duty on these items may be negotiated downwards or even made duty-free, but that would be on a reciprocal basis in which the United States would receive something from some other country for this concession. Furthermore although we cannot predict the future, we must not preclude the return of the domestic zinc mining industry to an increased level of operation that would more fully be able to supply domestic requirements of this important raw material.

Representative Jones of Oklahoma has pending before the Trade Subcommittee H.R. 4443 which would continue the duty suspension on these items for an additional five years. We have submitted a separate statement in support of H.R. 4443.

Our major concern, however, is with Section 3 of H.R. 5010 which would suspend the duty on unalloyed zinc metal. This is the principal product of the domestic zinc industry. This provision, if enacted into law, would be an example of a miscellaneous tariff bill causing serious harm to a domestic industry.

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[1] Zinc-bearing ores and concentrates (TSUS 602.20), zinc dross and skimmings (TSUS 603.30), other zinc-bearing materials (TSUS 603.49, 603.50, 603.54, and 603.55), and zinc waste and scrap (TSUS 626.10). These are now classified in Schedule 9 of the Tariff Schedules as TSUS 911.00 for zinc ores and concentrates, TSUS 911.01 for zinc dross and skimmings, TSUS 911.02 for other zinc-bearing materials, and TSUS 911.03 for zinc waste and scrap.

[2] Unwrought zinc, other than alloys of zinc (TSUS 626.02).

The industry is currently beginning to emerge from its severely depressed state during the recent recession. The efforts to reopen and modernize existing smelters to meet the current increase in demand and to put U.S. workers back on the job could be threatened by the loss of the duty. The loss of the duty could, in fact, adversely affect the still fragile recovery of the industry. ASARCO's zinc smelter in Corpus Christi, Texas, recently reopened after having been shut for 16 months and its future could well be in doubt if the duty is lost.

The United States already has the lowest import duty on unalloyed zinc of any major industrialized country. The current U.S. duty of 1.7 percent is equal to about 1 cent per pound, a not insignificant amount. In 1983, $9.1 million was collected in duty on imports of some 680,000 tons of unalloyed zinc valued at $504 million (see attached table). The suspension of the duty could result in a revenue loss to domestic producers of unalloyed zinc equal to the duties now collected on imported zinc.

Furthermore, the U.S. primary zinc industry is losing its tariff protection each year as the phased tariff reductions of the Multilateral Trade Negotiations take place. The current tariff of 1.7 percent will drop to 1.5 percent in 1987. To remove this adjustment period, which was made an integral part of the overall MTN tariff reduction process, would show bad faith to the U.S. primary zinc industry and subject it to totally unnecessary injury. On the other hand, Japan's duty is approximately 3 percent and the European Community's is 3.5 percent. In comparison to these duties, the U.S. duty is relatively small. If the U.S. duty on unalloyed zinc metal is removed altogether, it is the judgment of the companies which are members of the Lead-Zinc Producers Committee that an increasing amount of the world's exports of unalloyed zinc metal will be diverted to the U.S. market, jeopardizing what now remains of industry capacity.

It should be recalled that a surge of imports of unalloyed zinc metal caused extensive damage to the domestic industry which led the industry unsuccessfully to seek relief in 1978 under the "escape clause" of the Trade Act of 1974. Opposing the domestic industry at that time were the independent zinc alloyers who, we understand, are the proponents of H.R. 5010.

We find it remarkable that the alloyers would be pushing for the suspension of the duty on unalloyed zinc when they themselves are protected by a duty of 19 percent on imports of alloyed zinc. This is the highest duty for any metal or mineral in the U.S. Tariff Schedules today. The alloyers were able to protect their 19 percent duty during the Multilateral Trade Negotiations and this duty will remain at the 19 percent level at the same time that the duty on unalloyed zinc is being phased down to 1.5 percent in 1987. The virtual complete protection that the alloyers enjoy can be shown by the level of imports of alloyed zinc in 1983 (see attached table). They totaled 55 tons valued at $35,000.

We submit that the opposition of the independent alloyers is not well-founded and that, on the contrary, a healthy domestic smelting and refining industry is actually in the best long-term interest of zinc-consuming industries. The elimination of the duty on unalloyed zinc would work directly against this important interest.

The United States needs its own viable primary zinc industry for both economic and strategic reasons. In the Committee's judgment the passage of H.R. 5010 would call into question the future viability of this industry. We urge the Subcommittee not to report H.R. 5010 favorably.

U.S. IMPORTS OF UNWROUGHT ALLOYED AND UNALLOYED ZINC, 1983: QUANTITY, VALUE, DUTY RATE, AND COLLECTED DUTY

	Quantity (pounds)	Value	Duty rate	Duty collected
Unalloyed (TSUSA 626.0200)	1,361,641,650	$503,853,026	1.8 percent ad valorem	$9,083,553
Alloyed (TSUSA 626.0400)	109,074	34,907	19 percent ad valorem	4,279
Total	1,361,750,724	503,887,933		9,087,832

STATEMENT OF EDWARD L. MERRIGAN, COUNSEL, NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC.

This statement is submitted by Edward L. Merrigan, Counsel for the National Association of Recycling Industries, Inc., the trade association for the nation's metals, paper, textile and rubber recycling industries. My address is 6000 Connecticut Avenue, N.W., Washington, D.C. 20815, and my telephone number is 656-0210.

The Association's position with reference to H.R. 4443 and H.R. 5010 is brief, simple and direct. It favors early enactment of legislation which will continue to suspend beyond June 30, 1984 duties on zinc waste, scrap, dross and skimmings—preferably legislation which will permanently suspend dutiable treatment of these vitally important recyclable commodities.

As the committee will recall, at the end of the 97th Congress, legislation (Pub. Law 97-446) was enacted which permanently suspended duties on other forms of recyclable metal scrap. As in the case of metal scrap, duties on recyclable zinc scrap etc. have been suspended for a ong period of years, and many independent smelters in the United States depend on imported recyclable forms of zinc in the same way that some domestic zinc producers depend on imported virgin zinc ores. Permanent duty-free treatment of these vitally important raw materials would preclude an unfair, damaging increase in industrial costs for the smelters that must depend on these recycled zinc materials

Duty-free importation of recyclable zinc over a long period of years plainly has not adversely affected any U.S. interests—indeed, it has operated to maintain competitive equality among virgin and secondary producers of zinc products.

Accordingly, this Association respectfully urges Congress to approve either H.R. 4443 or H.R. 5010 at this time, but to modify same to the extent necessary to make the duty-free treatment of recyclable zinc imports permanent.

H.R. 4482

A bill to amend the Tariff Schedules of the United States with respect to the classification of certain diamond articles.

STATEMENT OF C.D. SWICK, MANAGER, MARKETING, SPECIALTY MATERIALS BUSINESS DEPARTMENT, GENERAL ELECTRIC CO.

SUMMARY

This statement is submitted on behalf of General Electric Company in support of H.R. 4482, a bill which provides for the suspension of duty on imported polycrystalline diamond compact ("PDC") tool blanks and drill blanks. These PDC blanks are used predominantly in the manufacture of drill bits for oil and gas exploration. In fact, all major domestic U.S. manufacturers of oil and gas exploration bits purchase PDC blanks. The enactment of the proposed legislation should tend to decrease the cost of drilling for such critical natural resources.

The use of PDC blanks has resulted in cost reduction and higher productivity in drilling by allowing the oil or gas explorer to drill longer and faster than is possible with exploration bits of traditional design. The strategic importance of attaining cost reduction in energy resource exploration is, of course, manifest. As our oil and gas reserves are declining, so too are new exploration and production because of the sqeeze caused by high costs and moderating energy prices. Without reductions in the cost of drilling (such as those made possible by the use of drill bits incorporting PDC blanks) to increase the attractiveness of domestic exploration, U.S. energy consumption will initially shift increasingly to foreign sources.

PDC blanks also have a proven track record in the mining industry. Mining drill bits made with PDC blanks have shown substantially improved performance with respect to tool life and drilling speed. Other potential benefits for the mining industry include increased mining safety and reduced power requirements.

Most all of the PDC blanks used in the manufacture of drill bits for oil and gas exploration and mining applications are manufactured by General Electric Company in the United States and Ireland and by other foreign manufacturers. General Electric urges favorable consideration of the bill: the loss of revenue occasioned by enactment is estimated to be less than $1 million annually; on the other hand, the domestic energy industry will realize lower production costs, which should promote increased energy exploration in the U.S., and domestic tool and drill bit facilities will have easier acess to PDC blanks and should be more competitive internationally.

STATEMENT

Mr. Chairman and Members of the Subcommittee, My name is David Swick. I am the Marketing Manager for the Specialty Materials Department of General Electric Company headquartered in Worthington, Ohio. This Department directly employs more than 950 manufacturing, engineering, marketing, service, and support personnel at the Worthington facility. In addition, the Department has an affiliate, Specialty Materials International, located in Dublin, Ireland. Both locations are involved in the manufacture of superabrasive products including polycrystalline diamond compacts which are distributed throughout the world. These compacts are used as drill blanks and tool blanks, predominantly in the oil and gas exploration industry but also, to a lesser extent, in other mining and industrial applications. The following comments are submitted in support of H.R. 4482. This Bill provides for a new tariff classification and a suspension of duty treatment for polycrystalline diamond compact tool blanks and drill blanks.

A polycrystalline diamond compact blank (hereinafter "PDC blank") is comprised of randomly oriented, synthetic diamond crystals bonded together by a high-pressure, high-temperature process which may or may not be bonded to a substrate (most typically a cemented tungsten carbide). PDC blanks come in a variety of shapes, including cylinders, triangular prisms, etc.

As noted, PDC blanks are used in a number of natural resource development and other industrial applications. These would include the use of PDC blanks in the manufacture of drill bits used in oil and gas exploration and various mining functions. The incorporation of PDC blanks into drill bits used principally in oil and gas exploration is a relatively recent development in oil field technology which offers attractive advantages in reducing the cost of drilling for oil and gas. All major domestic U.S. manufacturers of oil and gas exploration bits purchase PDC blanks.

The use of PDC blanks in oil and gas exploration benefits the firm seeking these natural resources, principally through allowing higher productivity in drilling. Higher productivity is achieved largely through allowing the oil or gas explorer to drill longer and faster than is possible with oil and gas exploration drill bits of traditional design. See, e.g., Appendix 1, which includes severl case histories in point. Oil and gas exploration drill bits incorporating PDC blanks have already been cited for several records for total footage drilled and speed of drilling published in the Book of Records by Drilling magazine.

Cost reduction in exploring for oil and natural gas as a strategic issue is becoming more significant. Despite the record footage drilled in oil and gas exploration drilled during 1980 and 1981, crude oil reserves for 1982 again showed a decline of 5.3% from the preceding year and for 1983, showed an additional 1.8% decline, as reported by Data Resources, Inc. Natural gas reserves held steady between 1981 and 1982 but declined by 2.2% between 1982 and 1983. During this period, U.S. domestic oil production remained flat and natural gas production declined 17.1%. Forecasts prepared by Data Resources, Inc., indicate that remaining potential reserves in the continental United States in the lowest cost category, onshore drilling, are expected to decline by approximately 30% for crude oil and 20% for natural gas between now and the end of the decade. Implicit in this forecast is the corollary that only the most expensive domestic locations remain for exploring for oil and natural gas. Without reductions in the cost of drilling to increase the attractiveness for domestic exploration, now stabilizing due to moderating oil prices, U.S. domestic oil consumption can only inevitably shift increasingly to more foreign sources. Reducing the cost of domestic drilling will enhance the viability of domestic sources of oil and natural gas. The increased availability of PDC blanks for manufacture of these advanced design oil and gas exploration drill bits will contribute to this cost reduction. It is anticipated that the suspension of the tariff will help U.S. distributors of PDC blanks and drill bit manufacturers using PDC blanks to maintain competitive prices despite increasing costs, thereby increasing the attractiveness of this developing technology.

In addition to the use of PDC blanks in tools for oil and gas exploration, the United States Department of Energy has done research into the technology involving the use of PDC blanks for advanced technology roof bolt drill bit applications in the mining industry. Results of this research published in Sandia Report SAND-82-2957 issued in July, 1983 indicate that substantially improved performance with respect to tool life and drilling speed could be achieved with mining roof bolt drill bits made with PDC blanks. Economic analysis concluded that realizable reductions in roof bolt drilling costs could be achieved through the use of advanced design bits made with PDC blanks. Additional research performed by the U.S. Department of the Interior, Bureau of Mines published in their Report of Investigation RI 8802 issued in 1983 indicates that promising application of drag bits using PDC blanks exists. Potential benefits for the mining industry included beneficial application for mining safety and reduced power requirements for drilling while mining.

The vast majority of the PDC blanks used in the manufacture of drill bits for oil and gas exploration and mining applications are manufactured by General Electric Company in the United States and Ireland and by other foreign manufacturers. Total domestic production of PDC blanks, excluding General Electric, is approximately 4% of domestic sales. In addition, General Electric is actively working with a large number of domestic drill bit manufacturers in support of this vital technology. Examples of General Electric's PDC blanks are Stratapax *, Compax *, Geoset *, and Formset *.

We urge the Committee's favorable consideration of this legislation so that domestic tool and drill bit fabricators will have easier access to PDC blanks and be more competitive internationally. The domestic energy industry will realize lower production costs which will promote increased energy exploration in the United States. It is anticipated that the passage of H.R. 4482 will result in a revenue loss of less than $1 million annually. There will be no impact on any Beneficiary Developing Country under the Generalized System of Preferences.

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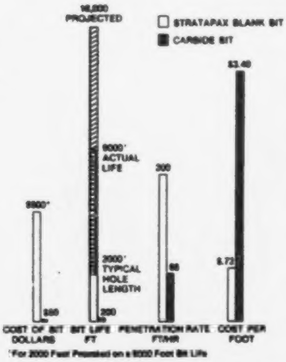
* Trademark of General Electric Company, USA.

CASE HISTORY 401

GE'S STRATAPAX® DRILL BLANKS PUT TEETH IN GAS-DRAINING OPERATION

Methane drilling economics have been significantly improved with the use of a drill bit containing General Electric's STRATAPAX drill blanks. In the past costs have approached $4.00 per foot with tungsten carbide-studded bits having an average life of 200 ft/bit. But, by incorporating natural diamond stones and General Electric's STRATAPAX drill blanks into the design, a bit was developed by a bit manufacturer that has helped one user reduce drilling costs considerably.

For example, one STRATAPAX blank drill bit has drilled more than 9,000 feet of hole at a cost of just $.72/foot. And the bit manufacturer is convinced that the economics will get better, since bit life is projected to be at least 16,000 feet.



COMPARISON OF STRATADRILL BIT AND CARBIDE BIT

Currently, these bits are being used in the Southwestern U.S. to drill horizontal holes 2,500 to 3,000 feet in length in coal seams. Coal seam drilling reduces the concentration of methane in the seam face being mined, and permits a greater degree of safety in underground mining operations. Bit design, however, is not limited to horizontal drilling. The bit can also be used effectively in many vertical drilling applications.

Bits now in use are 3½ inches in diameter, and are studded with 10 STRATAPAX drill blanks arranged in five rows. The disc-shaped blanks are brazed to the bit. They are composed of a highly wear-resistant layer of sintered diamond on a tungsten carbide substrate and are set in a cast-matrix crown. The outside diameter (gauge) of the bit is set with 6-per-carat natural diamonds that provide bit stability and maintain hole size. Fifteen-per-carat natural diamonds are set in the crown to provide additional reinforcement for the matrix.

Five slots have been cast into the outside diameter of the bit. Each serves to assist in the removal of chips from the cutting area. A 60°, ½-inch-diameter cone, offset from the centerline of the bit, constitutes the bit apex. Bit design includes five water ports strategically placed so that the force of the water can move chips to the slots, and thus transport the chips back to the seam face. The action of the bit is such that a pencil-point-shaped core is cut, broken off and then jettisoned from the apex by the high-pressure water stream.

The bit is designed in such a way that minimum drilling fluid-pressure drop occurs through the bit. This feature permits maximum water pressure to drive the downhole motor. However, there is sufficient water flow and pressure to maintain chip removal.

Coal Mining (Methane Drainage) Bit

Directional control of the dynamically balanced bit is exact, and penetration rates average 200 ft/hr. In fact, drilling rates of 300 feet per hour have been recorded on numerous occasions.

The bit that drilled 9,000 feet, a footage that exceeds the life of a standard tungsten carbide bit by more than 40 times, is projected to outlast carbide by as much as 80 times. Thus, trips needed to change the bits have been significantly reduced—by as much as 40 hours on a 2,000-ft. hole.

Drilling rates exceed those of carbide bits by up to three times. Also, the extended life and sharpness of the STRATAPAX blanks and the higher penetration rates have helped reduce drilling costs.

Even though the STRATAPAX blank bit described above is more expensive than a tungsten carbide bit, it has already saved the user $24,120 in 9,000 feet of hole. Assuming an operating cost of $85.00/hr, a carbide bit life of 200 feet and a penetration rate of 66 ft/hr, the projected life of 16,000 ft/STRATAPAX blank bit can be expected to yield a total savings of $42,880 per bit.

®Trademark of the General Electric Company, U.S.A.

COAL SEAM DRILLING FOR METHANE GAS DRAINAGE

GENERAL ELECTRIC

CASE HISTORY 402

STRATAPAX* BLANK CORE BITS DRILL SAN ANDRES DOLOMITE FIVE TIMES FASTER THAN DIAMOND CORE BITS

Core bits using STRATAPAX* drill blanks have significantly reduced drilling time and costs for pressure core drilling at a major oil company's drilling site near Denver City, Texas. The 6½" (16.5 cm) O.D. × 2½" (6.4 cm) I.D. core bits were developed jointly by Diamond Oil Well Drilling Company (DOWDCO) and Sandia Laboratories. DOWDCO built the bits at Midland, Texas, and is building similar bits for additional coring projects.

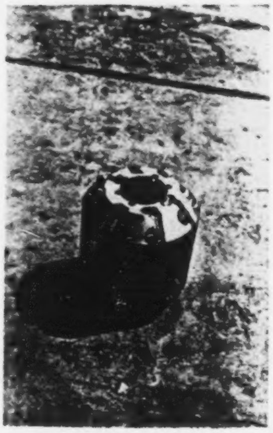
The purpose of the coring project is to provide information for development of effective tertiary production procedures. A series of 9-foot (2.7 m) cores was taken at 4,973 feet (1516 m) near an injection well.

Denver City, Texas drilling site.

Pressure coring preserves the downhole formation condition in the core, which allows for an accurate measurement of the change in oil content in the formation being examined. Of the 885 feet (270 m) of core taken, mined diamond drill bits were used for 518 feet (158 m) and STRATAPAX blank bits were used for 367 feet (112 m). Average penetration rate of mined diamond bits was 2.0 ft./hr. (.6 m/hr.) while the STRATAPAX blank bits averaged 10.8 ft./hr. (3.3 m/hr.)**

Cores taken with the STRATAPAX blank bits are of higher quality than cores taken with mined diamond bits. The higher instantaneous penetration rates of STRATAPAX blank core bits, four to six times that of mined diamond bits, prevents the core from breaking or crumbling, and minimizes the fluid invasion of the core. The high penetration rates combined with the low bit weights, 7,000 pounds (3182 kg), resulted in 95% core recovery.

The efficiency of the STRATAPAX blank bits has greatly speeded up the coring project at Denver City. Using conventional diamond bits, DOWDCO averaged two 9-foot (2.7 m) cores per day. With STRATAPAX blank bits, it is now possible to take three or four cores per day.



STRATAPAX blank bit developed by DOWDCO and Sandia Laboratories.

DOWDCO reports that the cutting structure of STRATAPAX blanks — which are made of a combination of polycrystalline Man-Made* diamond and cemented tungsten carbide produced as an integral blank by a high-temperature/high-pressure process — mounted on tungsten carbide studs is extremely tough.

Based on the success of this project, the oil company plans to specify only STRATAPAX blank bits for future pressure core drilling.

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*Trademarks of General Electric Company, USA

**Complete test data available from General Electric Specialty Materials Department, Compacts Drilling Products, upon request.

CORE DRILLING - PETROLEUM INDUSTRY

SPECIALTY MATERIALS DEPARTMENT • GENERAL ELECTRIC COMPANY
WORTHINGTON, OHIO 43085

GENERAL ELECTRIC

CASE HISTORY 411

STRATAPAX* BLANK BITS PENETRATE FASTER, LAST LONGER IN TUSCALOOSA TREND CHALK AND SHALE FORMATIONS

Drilling in the gas-rich Tuscaloosa trend of South Louisiana can be both costly and risky, especially when conventional drill bits are used.

Average well depth is close to 19,000 feet (5791 meters) and future wells may be as deep as 30,000 feet (9144 meters). Wells of average depth require 150 to 200 days to drill – an expensive operation with deep-drilling rig contract rates running at $8,000 per day. Completed well costs range from $4.5 million to $8.0 million.

Besides the usual problems associated with drilling deep wells, drilling contractors are faced with another, potentially serious problem. Chalk and shale formations above the Tuscaloosa sand are subject to drastic, often unpredictable, pressure changes, and there may be pressure changes in the sand itself. Bottom hole pressures close to 17,000 psi (1195 kilograms per square centimeter) have been reported. Pressure changes have led to several catastrophic blowouts in Tuscaloosa Trend drilling operations.

To reduce drilling costs and improve safety, some contractors have replaced conventional roller cone bits with STRATAPAX blank bits. The benefits derived from the change include faster penetration rates, longer bit life and reduced possibility of catastrophic blowouts – all leading to dramatic reduction in drilling costs.

STRATAPAX drill blanks, manufactured by the General Electric Company, consist of a layer of polycrystalline Man-Made* diamond and a cemented tungsten carbide substrate, produced as an integral blank by a high-pressure, high-temperature process. The blank has both the hardness and the abrasion resistance of diamond, and the impact strength of carbide.

Unlike conventional roller cone bits, STRATAPAX blank bits drill rock by a cutting or shearing action, rather than by a crushing action. This results in the faster penetration rates mentioned.

Because of their efficient cutting action, STRATAPAX blank bits require less weight on bit than roller cone or natural diamond bits. The hardness and abrasion resistance of the polycrystalline diamond cutting edge contributes to longer bit life.

Christensen Rockut 23 STRATAPAX blank bit.

Actual drilling performance of Christensen Rockut 23** STRATAPAX blank bits and conventional IADC 527 roller cone bits is compared in Tables 1 and 2. Both oil-base and water-base muds were used in these operations.

As seen in Table 1, which compares the performance of 8½ inch (216 millimeter) bits, the STRATAPAX blank bit penetrated the formation 1.5 times faster than the roller cone bit and averaged 2.5 times greater footage. In the best run in the series, a STRATAPAX blank bit drilled 1556 feet in 129 hours, for an average penetration rate of 12.1 feet per hour (3.7 meters per hour). During this single run, the STRATAPAX blank bit saved the operator $102,000.

Results for 10⅝-inch (270 millimeter) bits are equally impressive. On the average, STRATAPAX blank bits penetrated Tuscaloosa Trend chalk and shale formations twice as fast as roller cone bits and delivered four times more footage.

With STRATAPAX blank bits, on-bottom time is increased substantially. This reduces the number of trips, thus reducing the completed cost of the well and making catastrophic blow-outs less likely.

Another benefit of using STRATAPAX blank bits is longer drill string life. Lower bit weights help to increase the life of both drill strings and draw works, and lessen the chance of twist-offs in deep drilling operations.

There are fewer problems when drilling with STRATAPAX blank bits, too. STRATAPAX blank bits have no bearings or seals to fail, and no roller cones that could become detached from the bit and necessitate an expensive fishing job.

With these proven benefits, more STRATAPAX blank bits are being put to work in Tuscaloosa Trend drilling operations. They drill longer and faster at lower cost per foot, and are an important factor in reducing total drilling time and improving safety.

Table 1. Performance Comparison* of STRATAPAX Blank Bits versus Roller Cone Bits, Tuscaloosa Woodbine Trend Austin Chalk and Eagle Ford Shale Formations

	Bit Type	
Performance Parameter	Roller Cone Bit (IADC 527)	STRATAPAX Blank Bit (Christensen Rockut 23)
Bit size, inch (mm)	8½ (216)	8½ (216)
Bit weight, lb (kg)	35,000 (15,876)	10,000 (4536)
Rotary Speed, rpm	65	110
Total footage, ft (m)	500 (152)	1,400 (427)
Drilling time, hr	100	165
Penetration rate, ft/hr (m/hr)	5 (1.5)	8.5 (2.6)
Cost/ft (cost/m), U.S. $	120 (394)	75 (246)
Net savings, U.S. $	Datum	63,000

*Average of 13 runs

Table 2. Performance Comparison** of STRATAPAX Blank Bits versus Roller Cone Bits, Tuscaloosa Woodbine Trend Austin Chalk and Eagle Ford Shale Formations

	Bit Type	
Performance Parameter	Roller Cone Bit (IADC 527)	STRATAPAX Blank Bit (Christensen Rockut 23)
Bit size, inch (mm)	10⅝ (270)	10⅝ (270)
Bit weight, lb (kg)	40,000 (18,144)	16,000 (7257)
Rotary Speed, rpm	65	115
Total footage, ft (m)	335 (102)	1,221 (372)
Drilling time, hr	93	169
Penetration rate, ft/hr (m/hr)	3.6 (1.1)	7.2 (2.2)
Cost/ft (cost/m), U.S. $	206 (676)	106 (348)
Net savings, U.S. $	Datum	122,000

** Average of two runs

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*Trademark of General Electric Company, U.S.A.

**Trademark of Christensen, Inc.

Litho in U.S.A. (10M)

DEEP DRILLING IN THE TUSCALOOSA TREND

GENERAL ELECTRIC

H.R. 4513

A bill to extend for 4 years the temporary suspension of duty on tartaric acid and certain tartaric chemicals.

STATEMENT OF HON. BILL GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman: Thank you very much for allowing me to submit written testimony in support of H.R. 4513, a bill to extend for four years the temporary duty suspension currently in effect for imports of tartaric acid, antimony tartrate, cream of tartar, and Rochelle salts. I introduced this legislation on November 18, 1983, and I believe that it is in the best interest of American consumers and the chemical industry of the United States that the Congress act favorably upon this bill.

As you know, the initial duty suspension was passed during the 97th Congress in the form of H.R. 4566. Importers sought the initial duty suspension in light of the absence of any domestically-based production capacity, and in order to avoid the unnecessary inflationary price impact of the duty. In addition, the requested suspension was developed as a partial response to an inequity resulting from the 1900 conversion of a specific duty rate for these tartrates to an ad valorem equivalent rate. The conversion calculation had been based upon historical import value data which, by the time the converted rate was implemented, resulted in substantially increased duties becauses of inflation. This unnecessary effective increase in the duty rate, combined with the absence of any need for tariff protection for any related U.S. industry, clearly justified the duty suspension.

Since the suspension has been in effect, purchasers and users of tartrates have benefited, and there has been no adverse impact on any domestic producer or on the labor market. On the contrary, pharmaceutical manufacturers have benefitted from lower production costs for goods requiring tartrate raw materials, and the industry is not aware of any new efforts to produce tartrates in the United States. During the past three years (1981-1983), imports of tartrates have declined; thus, an extension of the suspension already in effect will not result in any substantial loss of tariff revenue. Finally, since tartrates remain eligible for duty-free treatment under the Generalized System of Preferences, a continued suspension will permit U.S. importers and sellers of higher quality Italian and Spanish tartrates to compete on more equitable terms with low-cost duty-free imports from G.S.P. beneficiaries, to the ultimate benefit of U.S. consumers.

As you may know, Senator Daniel Patrick Moynihan, of New York, is planning to introduce an identical measure in the Senate. It is clear that an extension of the temporary duty suspension is in the best interests of the American public, that this legislation is justified when viewed in light of the American chemicals industry, and that H.R. 4513 presents a fair and equitable solution to the situation stated above. For these reasons, I urge you and the Subcommittee to adopt this proposal once again. Thank you very much for your time and your consideration in this matter.

STATEMENT OF MATTHEW T. MCGRATH, COUNSEL, ON BEHALF OF PFIZER, INC., AND TARTARIC CHEMICALS CORP.

This Statement is submitted on behalf of Pfizer, Inc., 235 E. 42nd Street, New York, NY, and the Tartaric Chemicals Corporation, 515 Madison Avenue, New York, NY ("TCC"). Both companies import certain tartaric chemicals. In addition, Pfizer is a producer of chemicals and pharmaceuticals in the United States. Pfizer and TCC strongly support the passage of H.R. 4513, introduced by Congressman Bill Green of New York, to extend for four years the duty suspension currently in effect for certain imported tartrates. The suspension of tariffs for this product will continue to make available to U.S. purchasers, at a lower cost, products which are not manufactured in the United States, and for which the regular tariff rates are unjustifiably restrictive and inflationary. Furthermore, the production processes involved are of such a nature that it is extremely unlikely that any domestic tartrate production will be undertaken in the foreseeable future. Therefore, we support the passage of H.R. 4513.

PRODUCT DESCRIPTION

Tartaric acid is a dibasic dihydroxy acid which occurs in grapes as potassium salt. During the fermentation of wine, the potassium is deposited in the vats, and is extracted for use in producing tartaric acid. Crude tartars, the raw materials used for the chemical reactions which yield tartartic acid, may be recovered from the crystallized residues from grape juice press cakes, or from crystalline crusts which form in wine vats during the secondary fermentation period. Tartars may also be recovered from lees, the dried wine fermentation sediments composed of yeast cells, pectinous substances and tartars. Because of annual variations in the cost of raw materials and inconsistencies in chemical processes, tartaric acid has not generally been produced synthetically in commercial form. Thus, the producers of tartrates rely heavily on the natural fermentation methods developed in Italy and Spain as an adjunct to the wine production industries in those countries. The following are the specific tartaric products addressed in H.R. 4513, and which are presently subject to a temporary duty suspension:

(1) Tartaric Acid, which is imported in powder or granular form, is used as an acidulant in carbonated and still beverages, and in the manufacture of gelatin and pectin jellies for candies, where it is used to provide the proper flow characteristics for casting. The acid, in combination with its salts, may be used in paste and powder cleansers, and for electrolytic polishing of copper and ferrous metals. Tartaric acid is used as a mordant in textile dyeing, for photographic developing and for blueprinting.

(2) Rochelle Salt, or sodium tartrate, is derived from crude tartars in a filtration process, and is also imported in a granular form. It is particularly useful as a bath component in electroplating various metals and alloys, and is used in the silvering of mirrors. Rochelle salts may be used medicinally in effervescing powders, and as an emulsifying agent in processed cheeses.

(3) Cream of Tartar, or potassium bitartrate, may be produced by combining tartaric acid and Rochelle salt solutions with potassium sulfate, which is then heated, filtered and purified. It is imported in granular or powder form, and may be used in baking powder or prepared baking mixes, or for the aeration of cakes. Cream of tartar is used in the electrolytic tinning of iron and steel and in gold and silver coating of metals. The application of a cream of tartar solution to metals deters oxide formation prior to plating.

(4) Tartar Emetic, potassium antimony tartrate, results from the combination of potassium bitartrate and antimony oxide in a reaction vessel, and is produced and imported in crystalline form. It may be used medicinally as an expectorant or emetic, or industrially as a dyeing mordant in cotton, leather or fur. It may also be used in textile printing to inhibit or retard the discoloration of textile materials.

Tartaric acid, cream of tartar, and tartar emetic are not produced in the United States. Rochelle salts, which is derived from imported tartrates, is produced only in small quantities in the United States, and only by Pfizer. Domestic production capacity is insufficient to meet total U.S. demands.

PRIOR TARIFF TREATMENT

The chemicals which are the subject of this bill are currently provided for in Part 1 of Schedule 9 of the Tariff Schedules of the United States, items 907.65, 907.66, 907.68 and 907.69, subject to temporary legislative duty suspension. In the absence of such suspension, these products would be classified and dutiable as follows:

Product	TSUS	1984 rate
Tartaric Acid	425.94	5.1 percent ad valorem.
Tartar Emetic	426.72	1.9 percent ad valorem.
Cream of Tartar	426.76	5.5 percent ad valorem.
Rochelle Salts	426.82	4.7 percent ad valorem.

Upon the expiration of the current temporary suspension on July 1, 1984, the tariff would revert to these column 1 rates of duty, increasing the cost of these products to the purchasers, processors, and consumers.

In reporting favorably on the original duty suspension legislation,[1] this Committee noted that the conversion of tariffs from specific to ad valorem equivalent rates of duty during the Multilateral Trade Negotiations had failed to take account of inflationary price increases which occurred subsequent to the time of the underlying calculations on which the ad valorem conversions were based. The Committee concluded that "* * * the threefold tariff increase due to conversion was so large a cost as to have an extremely burdensome and immediate effect on imports, and [the Committee believes] that the importers should not be penalized as a result." H. Rept. No. 97-257, 97th Cong., 1st Sess. 15 (Sept. 25, 1981).

A CONTINUED DUTY SUSPENSION FOR TARTRATE IMPORTS WOULD BENEFIT CONSUMERS AND U.S. BUSINESS

The producers and consumers of the range of products listed above which are manufactured with imported tartrates would receive the benefit of the tariff suspension extension in H.R. 4513. The upward trend of the cost for tartrates has continued since the suspension was first enacted, more than tripling for tartaric acid alone. The reversion of the tariffs to the pre-suspension rates would re-impose the substantial burdens which faced importers and purchasers after the conversion of specific to ad valorem rates of duty in 1980. The duties assessed on these products would likely result in increased prices of 2 to 6 percent to U.S. purchasers. Furthermore, extreme short-term fluctuations in price, caused by periodic shortages of tartrate raw materials, can result in unexpected and rapid price escalation, which would only be compounded by a reversion to the duty rates provided in column 1 of the Tariff Schedules. Since there is no domestic industry producing tartrates which requires tariff protections, and since no interest has been exhibited by domestic concerns to produce tartrates during the present duty suspension, there is no reason to revert to such inflationary duty rates. Indeed, numerous U.S. manufacturers of products listed above, such as food processors and pharmaceutical producers, would continue to benefit from a suspension of duties through lower raw material costs.

The tariff burden which would be borne by importers of tartrates from Italy, Spain and France, in the event of reversion to the normal duty rates, is of particular concern. As was noted in comments supporting the original duty suspension, the quality of tartrates produced in Europe is considered superior by many industrial purchasers in the United States, and there exists a market preference for tartaric chemicals of Italian, Spanish or French origin, depending upon the requirements for end-use of the product. Since the production of quality tartrates is more costly, the import value, and hence the assessed duty, is higher than for tartrates produced under less costly processes from cheaper raw materials. In addition, these products are eligible to receive duty-free treatment when imported from beneficiary developing countries under the Generalized System of Preferences. Thus, although the quality of the European product is generally preferred, lower-priced, duty-free imports continue to exert strong competitive pressure as tartrate prices escalate. As this Committee concluded in 1981, "[t]he suspension would assist U.S. importers of the chemicals from Italy and Spain to compete with tartaric products entered duty-free from Argentina under the Generalized System of Preferences." H. Rep. No. 97-257, 97th Cong., 1st Sess. 15 (1981). The current suspension has had the desired effect of restoring a competitive balance between the dutiable and duty-free imports, and the balance would be upset if duties were to revert to their previous ad valorem rates.

In conclusion, Pfizer and TCC strongly favor the extension of the temporary duty suspension on tartrates, as set forth in H.R. 4513. The current suspension has benefited importers and purchasers of these products, without adversely affecting any domestic industry or workers, and without resulting in any significant loss of tariff revenue to the U.S. Treasury. A continued tariff suspension will maintain the competitive balance between dutiable and duty-free imports. Since the unique tartrate production processes are not easily and economically adaptable to U.S. production methods, Pfizer and TCC believe that a continued tariff suspension will not discourage efforts to commence production of these tartrates in the United States. During the 97th Congress, both the House Committee on Ways and Means and the Senate Committee on Finance reported favorably on the legislative suspension, and the Administration did not oppose the measure. Pfizer and TCC submit that a reversion to the normal duty rates would simply increase the cost of these products to U.S manufacturers and consumers, while yielding no positive results. Therefore, the tariff suspension for tartaric acid, tartar emetic, cream of tartar, and Rochelle salts should be extended, and it is respectfully requested that the Committee report favorably on H.R. 4513.

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[1] H.R. 1910, also introduced by Congressman Green during the 1st Session of the 97th Congress. The bill was enacted as Section 139 of P.L. 97-446.

H.R. 4647

To apply a reduced rate of duty to certain dried egg yolk processed from eggs produced in the United States and exported to Canada for use in the manufacture of lysozyme.

STATEMENT OF DENNIS PALMER, OWNER, DAKOTA LAY'D EGGS, CANDO, ND

With regard to House Bill 4647, we would like to submit the following testimony and strongly urge the Trade Subcommittee to support this bill. This bill reduces the tariff on dried egg yolk imported into the U.S. as a byproduct of the manufacturing of Lysozyme by a Canadian processor which uses U.S. eggs.

(1) A long-term contract between the U.S. egg producers and the Canadian plant was signed that calls for approximately $10,000,000 per year in egg sales on long-term arrangement. This contract has a total export value of approximately $70,000,000 over the term of the contract. That contract in itself, stabilizes much of the existing production and gives it a place to go.

(2) Since the demise of a local processing plant, this region has had an excess supply of eggs. Due to that, our market has been greatly depressed and we have a minimum of 750,000 birds in excess production, which, in fact, have helped depress this entire region's prices. Therefore, moving these eggs out of U.S. market channels into the Canadian market will help our market.

(3) This bill will help reduce our trade deficit by promoting U.S. exports. The eggs that are exported to Canada are going to be used for the extraction of Lysozyme, manufactured from the whites only of the egg. Lysozyme is contracted to Japan. There is no market for the yolks in Canada, however, there is a market both here and in the Far East. The high tariff—27¢/lb.—into the U.S. has not made it easy to obtain this contract. We anticipate a minimum of yolk coming back to the United States because the international markets always pay a higher price for yolks than generally the domestic market does. We do need the ability to bring it back to the United States at reasonable cost, because if, in fact, it cannot be sold internationally, Canada is not going to allow this product to be sold into its own country when the eggs originate in the United States. The lower tariff then acts as an incentive to the Canadians to purchase the U.S. eggs under contract and to sign similar future contracts. The major issue here is that 15,000,000 dozen eggs are being produced in the United states and shipped to Canada for processing. It only makes sense that they should be able to utilize our market for their excess product. If, in fact, our eggs are not sent to Canada, all those eggs will be available on the market and will depress the market, as we have seen over the past four years. The key is that we are moving eggs to Canada, out of our domestic market, so if portions of those eggs come back in, they will not injure our market because they would already affect the U.S. market today, were they not exported.

(4) When these surplus eggs are on the market in the United states, depressing prices. the large egg buyers/processors have further depressed the market to their own advantage and to the individual egg producer's disadvantage; putting 4,000 of those egg producers out of business in the last three years. In 1980 this country exported approximately 5,000,000 cases of eggs and in 1983 approximately 400,000 cases. The drop in exports has been due to many factors, including strength of the dollar and the subsidizing of eggs by foreign countries, in particular, the EEC. This contract gives us an opportunity to export more eggs to Canada than the entire U.S. exported last year. The U.S. does need exports of farm commodities.

(5) One wants to remember that eggs are a value added product. The example is that it takes four loads of grain for every load of eggs. At the normal retail value that is approximately $22.00 in retail value. If you consider that 100 lbs. of grain is approximately two bushels, then we are earning, for the American farmer, $11.00 per bushel for this grain that is going to Canada in the form of eggs. It is inconceivable to me that any processor could be so self-serving as to try to cheat the farmer out of $11.00 grain. Our goals are to sell value added products out of the United States. This is, again, consistent with U.S. policy.

(6) Should we not pass this legislation, we are informed that the Canadian firm will buy eggs from the EEC or from Israel. In the case of either, the Canadian government will subsidize that product for the freight coming into Canada and also the cost of the duty coming into the United States on that product. This is truly a double-wammy for the U.S. egg producer:

(a) We don't get to sell the eggs to Canada, therefore, the eggs are still on the market, causing a continued glut.

(b) The EEC of Israel imports eggs to Canada and we are still besieged with their excess yolk in our market. That hurts both the egg producer and the processor in a double fashion by not taking the product into the market subsidized by those countries for our duty. They are willing to pay the duty to come into this country to get those eggs off their market. The Canadians have a contract with Japan which the U.S. cannot obtain, since the FDA has not approved the manufacturing of Lysozyme in this country.

(7) This contract also helps the U.S. trucking industry, which has been hard hit since deregulation, because they will allow us to transport the eggs to Canada on American trucks—a new innovation in trade again.

(8) The Canadians' attitude is that if they can provide quality product to the Japanese, they are willing to expand this market. Therefore, we have an opportunity in the future to expand our sales from potentially 15,000,000 dozen to 30,000,00 dozen in the next five years. Once again, potentially doubling the contract value to $140,000,000. A lower tariff on the yolks should provide an incentive to the Canadians to purchase more U.S. eggs.

(9) There are some processors who apparently oppose this. We believe it is only for their self-serving interests. In the past it has never been their interest to serve American agriculture but only line their pockets. They have done that in near conspiratorial action of buying eegs in a format that depresses prices by going in and buying on the spot market. Their arguments, listed below seems to be totally unfounded for many reasons:

(a) Charge: Canadians would use the U.S. eggs for table grade eggs and use their own eggs for this process (inferring that Canadian yolks would be returned to the United States).

Reply: The bill restricts the tariff reduction to those U.S. eggs used in production of Lysozyme in Canada. The eggs that go from the United States to Canada are under Canadian inspection. They are not about to let our eggs go into the table market. They protect their industry—there is no question about it. This is our opportunity to get our eggs into Canada, but those eggs must be exported either to Japan, to Europe or in fact come back to the United States. They need this legislation so they are at no disadvantage. Remember they are paying American prices for American eggs, exporting 80 to 90% of their product to Japan. They need this relief to be able to come back to the United States so they are competitive.

(b) Charge: Canada does not permit same access to U.S. eggs that we allow for Canadian eggs.

Reply: This contract is very large and there are not enough Canadian eggs to fill it. In fact, the plant will probably buy some excess eggs from Canada in addition to the eggs we are supplying. The interesting point to this is that the Canadian government obviously does not want this because, just as the processors say, they do sell eggs down here. This is our opportunity to turn the tables. They do not have the supply and we can finally get into Canada more eggs than they ship down here.

(c) Charge: United States should concentrate on manufacturing Lysozyme here, so U.S. processors can process.

Reply: The Canadians are already ahead of us in technology with Lysozyme. In fact, they have a patent on the process and it cannot be produced in the United States. Even if it could, the FDA has not approved the drug's use in this country. Once again, we should not be jealous of someone else's technology, but should be smart enough to sell into it and use it to our advantage.

Processors seem to fear sales by producers to foreign countries. They see the bill as setting a precedent for more sales to processing plants abroad, even though this bill has a very narrow application. They seem to want to reduce export opportunities for U.S. egg producers if that might create more healthy competition for them.

(d) Charge: U.S. processors should be able to break U.S. eggs and send the whites to Canada.

Reply: The Canadians in fact will not purchase U.S. whites, for they have their own capacity to break these eggs and part of their contract calls for yolks to be shipped overseas. They want the product to be very fresh, and they do not need a broker in the middle of it. The relationship that the large processors want to play tends to be as a broker. Those companies complaining obviously demonstrate a lack of care for the egg producer as has been the case through the years. They are not concerned whether the egg producer breaks even or makes money, only that they can get their eggs at the absolute cheapest price. They have demonstrated that in the past by forcing 4,000 egg farmers out of business in the last three years.

(e) Charge: Could set precedent for more similar incentives that could promote sale of more subsidized Canadian egg products into the United States.

Reply: The most interesting consideration of all is to be the first to buy subsidized Canadian eggs every time they have an opportunity, further depressing the price and once again telling the poor farmer how bad the market is and how much excess supply we have and why they can't pay any more. If the egg producer in this country knew what the processors had in mind by fighting this legislation, so once again they could keep them poor and on the farm, they might be under a total boycott by all egg producers in this country. This legislation certainly supports the direct producer, the farmer that provides the grain and the trucker that hauls the eggs; and not just the 22 large companies breaking and drying eggs in the United States. This piece of legislation allows us the opportunity to reverse the trend of Canada shipping more eggs into the United States than the U.S. sends up there. The permits are already obtained to bring 15,000,000 dozen into Canada. The record demonstrates that Canada is shipping 30,000 cases into this country in excess of what we are shipping to Canada. This contract calls for 500,000 cases of eggs to go from the United States to Canada. Consequently, the 30,000 cases shipped into this country becomes only 6% of our exports instead of 150% plus. This effect is what we are after. The bill is narrowly drawn to permit re-entry of U.S. eggs only from one plant in Canada. It would not promote more Canadian subsidized eggs sales in the United States.

In conclusion, it would seem that it would be a travesty to not allow the American egg farmer to sell his product direct to a Canadian firm who in turn sells most of that product overseas. The true trasvesty is that those farmers in business may, in increasing numbers, go out of business. We have not found any alternative market because our government is not willing to subsidize eggs as are almost all other government in the world. We want to remember that the poultry industry is a 5.4 billion dollar industry and with a further demise of that industry; the price of corn, the price of meal and the price of wheat would continue to go down. But, if we can maintain or build our industry, those prices should be raised. We must consider all of American agriculture and not just the proprietary interests of a few very large companies who want to dominate the egg farmer and the egg industry because they work on a margin and are not concerned about break-even cost of agriculture.

Statement of Hon. Al Olson, Governor of North Dakota

We in North Dakota support this legislation for the following reasons:

1) The Canadian egg products manufacturers are forced by their government, to use U.S. eggs in this particular product. The Canadian government runs such a tight ship that no U.S. eggs, I repeat, no U.S. eggs, can be used in Canada as table grade eggs. Because of government regualtions in Canada, the egg supply available to the Canadian egg products manufacturer is so limited and in such quantities that the egg products manufacturer must go out of Canada for eggs for the production of Lysozyme. They will import eggs for this product whether it be from the United States, the EEC, Isreal or any other source available to them in the world.

2) It is true that U.S. companies do not have the same access to Canadian markets as our laws allow them to our market. However, this bill will enable the implementation of a contract to give a U.S. company 15,000,000 dozen eggs per year access to the Canadian markets, removing that product from an already overstrained pipeline of supply in the United States.

3) The production of Lysozyme (extraction of a part of the egg white for use in medicines) is not an allowed process yet in the United States because of FDA regulations. The Canadian firm in question has a patented process and has sales contracts for the sale of Lysozyme to Japanese markets.

4) Should we delude ourselves that the United States breaker and drying industry can break the eggs in the U.S. and sell the egg whites to their industry for Lysozyme extraction, we are merely killing the contract for the American producer. The reason for this being that in addition to the Lysozyme and the egg white sales the Canadian firm has for overseas, they also have a significant amount of dried yolk sales for which they would have no product.

5) Opposing viewpoints are concerned because the amount of dried whole egg powder shipped by Canada into the U.S., represents 30,000 cases of U.S. eggs which

are not being used for the production of the product. This seems rather inconsequential since the contract with the Canadian firm involves 500,000 cases of U.S. eggs being shipped to Canada yearly for the use in the production of Lysozyme.

I urge you to exert your most concentrated efforts towards the passage of this bill #HR4647.

I am enclosing a copy of a form letter sent to concerned persons by one of America's largest egg drying firms. I feel I have rebutted each of their five points.

Thank you very much.

[Attachment]

MILTON G. WALDBAUM CO.,
Wakefield, NE, February 23, 1984.

To Other Concerned Persons:

Please find enclosed a copy of a bill introduced by Congressman Frenzel of Minnesota. Basically what the bill does is provide for a lower duty on Canadian egg yolk powder produced from U.S. eggs imported and utilized for lysozyme production. The duty currently is 27 cents/lb. and this bill provides for the product to be charged at 5.5 cents/lb.

I am a proponent of free trade but feel that this particular bill is dangerous to the U.S. egg products industry for the following reasons;

1. The bill would not actually force the Canadian egg products manufacturers to use U.S. eggs for this particular product. They could import table grade eggs, under their import licenses, utilize those for their table market, and then utilize Canadian eggs for this particular usage. The laws on things like this usually allow like product to be utilized and only require that like amounts be imported and exported.

2. Canada has a marketing agreement which does not allow free trade of shell eggs or egg products. Thus, U.S. companies do not have the same access that we allow Canada to our market. As you know they ship about 3 times more shell eggs to the U.S. than they allow us to ship them. All shell eggs must be imported under license and the government agencies only allow them when it is to Canada's advantage. When our market is weak however, there is no control to stop the eggs from Canada being shipped into the U.S. and further depressing prices.

3. Lysozyme production (extraction of a part of the egg white for usage in medicines) is not an allowed process yet in the United States. Thus, a lower duty will only subsidize their industry to get far ahead of ours in technology.

4. There is much breaker and dryer capacity in the U.S. unused. It is to our industy and Country's advantage to break the eggs in the U.S. and sell egg whites to their industry for lysozyme extraction.

5. Perhaps the most important reason for opposing the bill is that it sets precedent which can be very dangerous to U.S. egg products producers and their suppliers. Canada's egg products industry receives many of their eggs at reduced prices directly from governmental agencies and thus could be subsidized in exports to the U.S. in the future. In 1983 Canada exported about 300,000 pounds of dried whole egg powder to the U.S. for usage in U.S. food processing facilities—this represents 30,000 cases of U.S. eggs which were not used for the production of that product.

I urge you to write your congressman and Congressman Frenzel and express your opposition to this bill. The bill number is H.R. 4647. The address to write is:

Congressman ————————,
U.S. House of Representatives, Washington, DC 20250

Should you have any questions or comments please feel free to contact me.

Best regards,

DEAN HUGHSON.

STATEMENT OF KENT JONES, COMMISSIONER OF AGRICULTURE, STATE OF NORTH DAKOTA

The entire North Dakota agriculture industry supports the above legislation. In our opinion, any manner of legislation which results in a net positive outflow of agricultural products from this country to any other country is a plus for the American farmer. I am enclosing a copy of a letter from one of the largest egg breaker/dryer companies in the United States. [The letter is identical to that printed above.] I would like to address this letter point by point.

(1) The bill itself might not actually force the Canadian egg products manufacturers to use U.S. eggs for this particular product, however, the Canadian Board of Control and the Canadian Inspection Bureau would not allow these U.S. eggs for

any other use in Canada, particularly table grade eggs. As these eggs come into Canada and are processed, they must be shipped out of Canada in order not to disrupt the egg supply/demand situation in the North.

(2) It is true that Canada has a marketing agreement which does not allow free trade of shell eggs or egg products coming into that country from the U.S., thus, what finer piece of statemanship could be accomplished than to allow a company in the U.S. to ship 15,000,000 dozen eggs into Canada and remove them from the oversupply laden pipelines in the U.S. economy. The net result would be that instead of Canada having the advantage over the U.S. egg industry by importing more shell eggs into the U.S. than what they allow us to ship to them, the tables would be turned.

(3) The production of Lysozyme (the extraction of the part of the egg white for usage in medicines) is not allowed yet in the United States. This is not because of a lack of technology in this country. it is because of FDA regulations and the plain and simple fact that Lysozyme process is patented by the firm in Canada.

(4) Should the U.S. egg industry break the eggs in the U.S. and sell egg whites to that industry in Canada for Lysozyme extraction, the entire contractural arrangement would fail. The reason for this is that included in the sale of the Lysozyme and the powdered egg whites is also 80 to 90 percent of the dried yolks from those eggs.

(5) Granted that Canada subsidizes their egg industry while the United States does not subsidize the U.S. egg industry. The complaint seems to be that eggs are coming into the U.S. in the amount of 30,000 cases per year, depressing the U.S. egg market. That seems a rather insignificant figure when you take into account that the U.S. firm in question will export 500,000 cases of eggs per year into Canada.

I request your wholehearted efforts to be expended towards the passage of this bill, H.R. 4647.

Thank you.

PECO FOODS, INC.,
Tuscaloosa, AL, March 23, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth Building, Washington, DC.

DEAR MR. SALMON: The purpose of this letter is to register the support from Peco Foods for H.R. 4647 introduced by Mr. Frenzel on January 25, 1984 and referred to the Committee on Ways and Means. Peco Foods is a major integrated poultry producer located in Tuscaloosa, Alabama employing approximately 550 people. In our opinion, the bill will greatly benefit the egg producer in the United States by facilitating the export of American shell eggs. As you are aware, the export of all American poultry products, including shell eggs, has been in steep decline in recent years.

H.R. 4647 provides for a reduction in the rate of import duty on dried egg yolk powder processed from shell eggs that have been produced in the United States and exported to Canada. The bill is fair both to the American tax payer and the American egg processor because the duty reduction applies only to egg yolk powder, less than 50 percent of the egg, and only on eggs of U.S. origin. The U.S. egg processor will continue to enjoy tariff protection on that part of the egg powder to which he has added value.

If H.R. 4647 passes, one of the egg processors in Canada that will be importing U.S. eggs and thereby utilizing its tariff reduction provisions is a major customer of Peco Foods. For many years now they have imported 12 million pounds per year of poultry from our plant for Canadian domestic use on a 52 week per year basis. Their continuing business has assisted in the price stabilization of the U.S. poultry industry. In our opinion, the passage of H.R. 4647 will result in similar long term benefits for the egg production sector of our industry.

Sincerely,

E.S. HARRIS III, *Vice President.*

United Egg Producers,
Decatur, GA, April 11, 1984.

Hon. Sam Gibbons,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Chairman: On behalf of the United Egg Producers, I am writing to express our opposition to H.R. 4647. We are opposed to this legislation for many reasons, some of which are outlined below. H.R. 4647 would reduce the import duty on certain dried egg yolks processed from eggs produced in the United States and exported to Canada for use in manufacture of lysozyme (which is used as an antibacterial agent in pharmaceuticals).

We in the U.S. are not permitted to extract lysozymes because this is a patented process in Canada. In addition, this process adds value to the product, thus giving Canadian firms a competitive advantage over U.S. firms. As a result of the patent, U.S. processors are already faced with an unfair trade advantage as they endeavor to compete in the world market.

Should H.R. 4647 be enacted, it would only further benefit the Canadians by reducing the import duty.

At the present time, U.S. egg processing firms provide egg whites to Canada for lysozyme extraction; therefore, we do not feel it necessary for Canadians to purchase fresh shell eggs and do the breaking/separating themselves.

This would only result in the loss of U.S. processing and breaking jobs, while at the same time, creating jobs for citizens of Canada. The United Egg Producers has a broad membership of producers, processors and breakers from every region of the United States.

While we recognize the need for lysozyme as an antibacterial agent in pharmaceuticals, we firmly believe that U.S. egg processors can meet this demand. We therefore urge you to oppose this legislation and would request an opportunity to testify before your Subcommittee, should any hearings be scheduled.

I appreciate the opportunity to express our views on this legislation and would be happy to answer any questions which you or your staff may have.

With kindest regards, I am

Sincerely,

Al Pope, *President.*

Economic Arguments

The primary reason we oppose reducing the duty on egg yolk is that we cannot support giving a Canadian egg processor yet another economic advantage over U.S. egg processors. The current duty of .27 per pound is fair and was set to reflect the estimated value of drying eggs and is independent of where the eggs come from originally. Even with this duty, Canada last year exported to the U.S. 300,000 pounds of whole egg or yolk power at a competitive price, displacing 30,000 cases of eggs that would have been broken here in the U.S.

The Canadian firm which extracts lysozyme from egg white already has substantial economic advantages over U.S. firms in the egg products market worldwide. First of all, they are able to remove lysozyme from egg whites and sell it to pharmaceutical companies without having to label the egg white power as having lysozyme removed. The value of the lysozyme amounts to as much as .67 per pound of dried white. The Canadian processor can theoretically reduce his price to that extent, giving him a substantial economic advantage on world markets to the detriment of U.S. processors.

According to USDA information (Publication EM 546 Schedule B) in calendar year 1983 the U.S. exported 6,961,466 pounds of dried egg whites. Of that amount, 5,719,987 pounds went to Japan. The value of the Japanese business alone was $7,947,414. The total value of egg white sales abroad was $9,868,823. The potential amount of albumen that the Canadian processor will be selling at a reduced price because of the value of the lysozyme extracted is 1,114,285 pounds, mostly to Japan. Without a reduction in the duty on yolk returning to the U.S., this processor has a strong cost advantage in his operation, we object to any measure that would give him an additional cost advantage.

Secondly, as the enclosed article points out, the Canadian government has, in effect, subsidized the expansion of the firm which is seeking this duty reduction. The lowered duty will amount to a U.S. subsidy for Canada's egg products industry and allow them to get far ahead of the U.S. in the lysozyme extraction technology. Lysozyme extraction is not yet allowed process in the U.S. However, U.S. processors are working on federal regulations and hope to be able to compete in the future. This bill would set back this progress substantially.

The duty reduction on the yolk powder returning to the U.S. will give an additional unfair advantage to Canadian processors to compete in our domestic egg products market. In effect, U.S. processors will be hit with a double economic disadvantage. The current contract between CanDo Egg Company (U.S.) and Export Packers Co., Ltd. (Canada), calls for 10 loads of shell eggs per week or 7,500 cases/week. One case would yield 10 to 12 pounds of liquid yolk or more than 75,000 pounds. Dried, it would yield up to 4,000 pounds per week. Over a year's time, 1.7 to 2.0 million pounds of dried yolk would be returning to the U.S. domestic market * * * approximately 15 percent of U.S. production! (Oct. 1, 1983 to Sept. 30, 1983 U.S. dried yolk production was 12,739,000 pounds.) Because it would be priced less than U.S. product due to the numerous advantages already in place as well as the proposed duty reduction, it would displace U.S. processor sales. In addition, processors would lose the market for over 4 million pounds of liquid white sold to Canada last year to meet their processors' needs.

You may ask why should an egg producer co-op, United Egg Producers, be concerned about whether or not an egg processor is hurt by this bill. If this duty reduction allows the Canadian firm to displace the dried yolk sales domestically in addition to the competitive advantage they already have in world markets for dried egg white, fewer eggs will be broken in the U.S. Fewer eggs will be purchased from U.S. producers for breaking, therefore, depressing the market for breaking stock. This price is the floor or the basis of our table egg market, therefore, the table egg price will be depressed. If this measure passes, it will most certainly hurt the U.S. egg processors and therefore will hurt all egg producers.

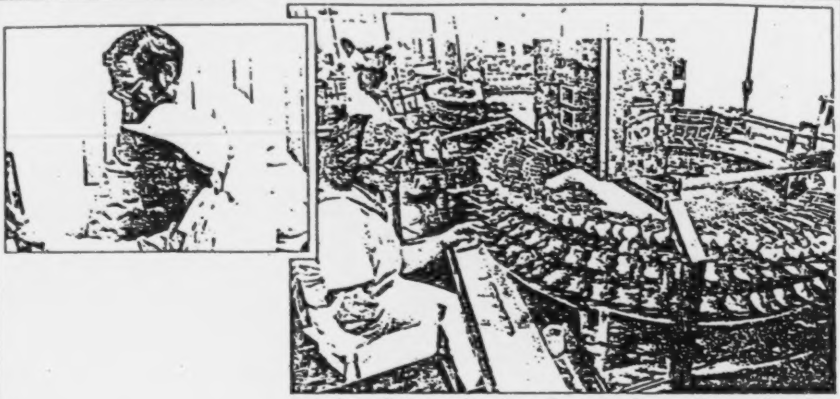
There is a great deal of unused egg breaking and drying capacity in the U.S. It is to the egg industry's and the United States' advantage to break the eggs here because of the jobs provided and the economic benefits to the areas where breakers/dryers are located.

We cannot accept the argument that this measure will help the U.S. egg producer by increasing egg sales to Canada and strengthening the egg price here. The only contract for shell eggs is between CanDo Egg Company and Export Packers Co., Ltd. No one outside of this company benefits from the eggs sold to Canada. It does not remove surplus eggs from our domestic market; therefore, does not strengthen the price nationwide.

The proponent of this bill argues that it will open up the Canadian market to U.S. producers for the first time, thereby benefitting all producers in the long run. We disagree. Although the Canadian government has agreed to increase supplemental permits to import U.S. shell eggs for this purpose, that is hardly "opening up" the Canadian market. The Canadian egg industry is a closed marketing and controlled production system. Producers are guaranteed a price through the egg marketing board, which purchases surplus and exports much of it to the U.S. breaker market, depressing our prices. This usually occurs at a time of year when we are also in surplus. We are allowed to export some eggs to Canada only under controlled conditions and at times when they are in short supply and we are also in short supply. This will not change. A duty reduction for dried egg yolk from U.S.-produced eggs isn't necessary for Canada to grant supplemental permits for any purpose and will not "open" the market. Conversely, we will not be "closing" any market by keeping the duty at .27 per pound.

The proponent of this bill also asserts that other processors in Canada will eventually utilize U.S. eggs in the same manner if the duty is reduced. We find this hard to accept. If the need for eggs exceeds Canada's capacity to produce, that need will be filled either through egg white purchased from U.S. breakers or shell eggs. A duty reduction isn't necessary.

In 1983, Canada exported nearly 2 million cases of eggs to the U.S. which was subsidized by producer assessments to the tune of $18.48 per case * * * or $13 million last year. They are in a surplus situation, and whenever they're in surplus, the U.S. breaker market receives their product * * * depressing prices in the U.S. We would much rather see the Canadian processor utilize their own surplus for their lysozyme needs so Canada won't have to dump their egg surplus in the U.S. For what reason would they want to buy produce from the U.S. if the Canadians have 2 million cases of eggs in surplus? The only conceivable reason is that it is a less expensive product. Of course, we have no objection to any Canadian firm purchasing either shell eggs or egg white from the U.S. if their needs aren't met by their domestic supply. We only oppose giving them an additional economic advantage by reducing the duty on egg yolk returning to the U.S.



Right, Export Packers employee Louise Turgeon checks egg-cracking machine which separates yolks and whites. Above, operations director Sam Robbins, standing, and quality control manager William Lim view test results in lab.

Enzymes from eggs

Winnipeg firm is the world's biggest producer of anti-viral agent Lysozyme

By D.L. AIKEN

Next time you have eggs for breakfast, look at them with considerable respect. They represent a commodity whose potential is only now beginning to be realized.

Human beings have used eggs as food for thousands of years, but research is now finding other uses for egg derivatives that could take us great leaps forward in medicine.

Some of that research is going on in Winnipeg, and its results are known and felt on a global scale. The secrets of the hitherto lowly egg are being probed by scientists in a company with the unlikely — and largely unknown — title of Export Packers Company Limited.

Export Packers is, in fact, the world's leading producer of a substance called Lysozyme, widely used and accepted in Europe and elsewhere but so far not approved in Canada and the United States. Lysozyme is an enzyme obtained from egg white, and is used as an anti-viral and food preserving agent. In Europe it is, reportedly, favored as a treatment for the common cold.

World markets

Export Packers' head office is in Bramalea, Ont., but its major production centre is at 70 Irene St., in the Fort Garry Industrial Park. Started 50 years ago as a small meat, fish and poultry company, it has expanded its operations and its range to the point where it now has world markets and a first-rate science and research centre in Winnipeg, receiving co-operation and assistance from the University of Manitoba and the National Research Council.

The Fort Garry complex was started in 1979, and the official opening of the most recent part of the two-stage expansion program was held November 25, 1983. Opening ceremony was conducted by Max Rubenstein, chairman of Export Packers board, and son of the company's founder, Herry Rubenstein. The company is still a family-owned corporation.

While Export Packers is increasingly active in research, its major line is still fresh and frozen meat, which accounts for 70 per cent of its sales volume. Processed egg products are 27 per cent of sales and the remaining three per cent is in pharmaceutical products.

About 80 per cent of the powdered eggs required by the Canadian food processing industry comes from the Winnipeg plant, and in addition, a considerable percentage of the Japanese market for albumen is supplied. Processed eggs account for about 10 per cent of total Canadian egg production.

The expanded Winnipeg plant takes delivery of eggs from the Manitoba Egg Marketing Board, and can handle astronomical quantities of the product. The egg cooler can hold 3.5 million eggs, the tempering room 1.2 million eggs and the freezer one million kilograms of frozen products.

After 24-30 hours in the tempering room to bring eggs to 13 degrees Celsius — ideal for breaking — they are moved to the production line where they are candled, sanitized and broken. Eight breaking machines are in operation. Six of these can break one million eggs each during an eight-hour shift, and the other two have a capacity of 100,000 eggs a day.

Yolks and whites are separated by the breakers and piped to storage tanks, then pumped through filters into refrigerated holding units. Egg shells are removed twice daily to a landfill site. The breaking process is subject to constant inspection and regular periodic cleaning and sanitizing of the machinery.

After mixing and adjusting of solids the yolks and whole eggs are pasteurized and sent to a pressurized room for packaging and freezing. Frozen products include salted yolk, salted whole egg, plain whole egg or sugared yolk, depending on customer requirements. A 1.8 kilogram scrambled egg mix for institutional use is also produced and frozen.

A variety of spray-dried egg products is produced then packed in polyethylene-lined fibre boxes. Throughout all these processes, rigid sanitary rules for both machines and personnel are enforced, and products are carefully numbered as to batch and carton lots.

Lysozyme is derived from the albumen or egg white. The process involves bringing the albumen into contact with resin which absorbs the Lysozyme enzyme. When the absorption process is complete, the remaining egg white is sent back for freezing or drying, and a chemical process separates the enzyme from the resin which has absorbed it.

The Lysozyme then goes through a number of processes and finally, in dried and blended form, is packed in one or 25 kilogram containers, ready for export as soon as laboratory tests have approved its quality. The production of the enzyme takes about four weeks.

The company's new two-storey science and technology unit has pilot-scale equipment which is, in essence, a reduced-size version of the production capacity in the plant. This permits test runs of production techniques, as well as expanded research into the many enzymes and microproteins contained in eggs.

A staff of 10 technicians and research scientists is already involved in seeking further products which may be marketable in the pharmaceutical field.

"We are unlocking the secrets of the egg," said John H. Lee, president of Export packers. "We have brought the egg-processing industry a long way from the rather primitive conditions which prevailed a few decades ago.

"Much of the progress has been due to the faith and vision of the founder of the company who used revenues to grow and develop. In addition, we have had great help and co-operation from various government agencies including the Manitoba government and the federal DREE programs."

Right combination

Indeed, he said, the financial incentives and assistance programs provided by both Manitoba and Ottawa made it possible for the company to create jobs and become involved in major export activities. More than $1.5 million was provided by government grants in the expansion of the Winnipeg plant, and in addition, funding was obtained through the Canadian Imperial Bank of Commerce, and several large investors such as pension funds.

"Why are we located here? Well, you may as well ask why we are in Canada and not in Japan or in the U.S.," Lee said. "We found here the right combination of raw material supply -- Manitoba is the province with the biggest egg surplus in Canada — people and economic climate. We are centrally located in the country, and we can count on a supply of materials."

Keith Glegg, vice-president (industry) of the national Research Council paid tribute to the energy, vision and willingness to move displayed by Export Packers.

He noted the very considerable aid received from his own organization and from the University of Manitoba and Agriculture Canada in achieving the status the company now enjoys. He predicted that "a great future will flow from what Export Packers and all those associated with it are learning...Such experience and knowledge will make us stronger, will help create more human livable cities, a more prosperous province and a great and generous country."

The research being done in Winnipeg has already produced Lysozyme, said Dr. Sen Gelda, Export Packers' director of science and technology, and this will expand the limits of knowledge in the field. Egg derivatives have anti-viral and cytotoxic qualities, the latter having been demonstrated in laboratory tests as being toxic to certain cancer cells.

In addition, egg-based products improve the digestibility of milk, and can be used as replacements for nitrites as preservative in sausage, chicken and other meat products.

Export Packers supplies about 30 per cent of the world demand for Lysozyme, and is the biggest producer of the substance. While most of the eggs used in the various processes in the plant are from Manitoba egg producers, one or two tank-trucks of egg white are imported weekly from Iowa and Minnesota, and drums of egg white are brought in from British Columbia.

The Lysozyme production process is a continuous one, which requires round-the-clock operation, and equipment manufactured specially for the purpose. MB

H.R. 4695

To amend the Tariff Schedules of the United States to impose a duty on tubeless tire valves.

STATEMENT OF HON. JACK EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman, I am pleased to testify in strong support of a bill I introduced, H.R. 4695, to amend the Tariff Schedules of the United States to impose a duty on tubeless tire valves.

The purpose of my bill is to provide relief to the domestic tubeless tire valve industry which is on the brink of collapse because of unfair foreign competition. The seven remaining tubeless tire valve manufacturers in the United States have been forced to lower their costs to such a degree that the industry is currently operating at a loss. Exports from West Germany, Japan, Taiwan, Romania, and Turkey are sold in the United States at a cost lower than our industry's manufacturing cost. The problem is persistent. It seems that each time our manufacturers lower their costs to compete with imports, the price of the imported product is further reduced.

My bill would attempt to ameliorate this problem by reclassifying tubeless tire valves under item 772.62 of the Tariff Schedules of the United States. This is the category for tires and tubes for tires. Presently, tubeless tire valves are classified under TSUS 692.32 for miscellaneous automobile parts, a broad assortment of articles. It is appropriate to categorize tubeless tire valves along with tires and tubes for tires. This reclassification would also entail an upward adjustment of the customs duty from 3.6 per cent ad valorem to 15 per cent ad valorem.

Mr. Chairman, I do not consider myself to be an advocate of protectionism. On the contrary, I believe strongly in free trade. I do not feel my bill, H.R. 4695, is in conflict with that philosophy.

I have worked for many years with my constituent, the Nylo-Flex Manufacturing Company, to resolve this problem through the proper channels. Unfortunately, our efforts have not been successful. The lack of success has been largely due to the company's strained financial condition and resulting inability to shoulder the expense of the thorough investigations required to produce hard evidence of dumping. Over the years, I became convinced that the activities of foreign exporters constitute unfair trade practices and that legislative action was necessary.

My bill does not seek to set quotas. It is, in my view, a fair proposal to place tubeless tire valves in the the proper TSUS classification and to raise the duty on these items. I believe H.R. 4695 merits your serious attention. Mr. Chairman, I urge early and favorable action on this legislation.

I appreciate having the opportunity to express my views.

STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

SUMMARY

Tubeless tire valves are now classified under TSUS item 692.32, a general basket category for hundreds of articles related to automobiles but unrelated to articles or parts of tires. S. 1518 would remedy this error in classification by establishing a specific classification for tubeless tire valves under the TSUS item reserved for tires and tire parts.

Furthermore, while S. 1518 does not seek a quota or an exclusion from the U.S. market for imported tire valves, it does adjust the customs duty upward to 15 percent ad valorem. The purpose of the increase is to restore fairness to market competition. Over a period of years, imports of tubeless tire valves have entered the United States at consistently lowering prices, despite rampant inflation worldwide. This has forced U.S. manufacturers of tire valves to either meet foreign competition or lose business.

There are only seven remaining companies in the United States that make tubeless tire valves: Nylo-Flex Manufacturing Company of Mobile Alabama; Schrader Automotive Division of Scovill, Nashville, Tennessee; Eaton Corporation of Cleveland, Ohio; Bridgeport Brass of Bridgeport, Connecticut; Milton Industries of Chicago, Illinois; "31" Inc., of Ravenna, Ohio; and the Cupples Company of St. Louis, Missouri. These seven companies are suffering continuing losses, despite heavy investment in plant modernization essential to meet foreign competition.

In 1982 Nylo-Flex filed before the International Trade Commission a petition for import relief under Section 201 of the Trade Act of 1974. The company did not have large enough resources to find actual proof of dumping. It is difficult for a small company to spend hundreds of thousands of dollars to scour foreign countries with detectives to obtain evidence of dumping or other unfair trade practices, particularly when the company is experiencing a decline in revenues due to such dumping.

In order to save this industry, which is important to our country, I urge the Committee to act favorably on the bill in an expeditious manner.

STATEMENT

Mr. Chairman: Today I am offering written testimony on H.R. 4695, a bill to amend Tariff Schedules of the United States to impose a duty on tubeless tire valves.

Over a period of years, imports of tubeless tire valves have entered the United States at consistently lowering prices—despite rampant inflatin worldwide! This has forced U.S. manufacturers of tire valves to either meet foreign competition or lose business. There are only seven remaining companies in the United States that make tubeless tire valves. Nylo-Flex Manufacturing Company of Mobile, Alabama; Schrader Automotive Division of Scovill, Nashville, Tennessee; Eaton Corporation of Cleveland, Ohio; Bridgepart Brass of Bridgeport, Connecticut; Milton Industries of Chicago, Illinois; "31" Inc., of Ravenna, Ohio; and the Cupples Company of St. Louis, Missouri.

My bill seeks to keep these companies in business and assure them that imports will not unfairly take their markets away. Today, these U.S. companies can only experience losses by having chosen to stay in business to meet foreign competition, rather than to give up and to leave the United States without a tubeless tire valve industry.

It may not seem necessary that the United States have a tubeless tire valve industry, but I hasten to point out that tires and replacement tires all need tubeless tire valves. In case of a national emergency or ever war, this could become a critical issue and issue of national security. I do not want to become overly dramatic on this subject, but I do suggest that it is important that small industries such as the tubeless tire valve industry be protected in the United States from creeping unfair trade practices which threaten the very heart of our industrial base and even our national security.

Foreign countries have established unreasonably low tubeless tire valve prices in the U.S. market. This has been accomplished by actual sales and "tricky" quotations given on a daily basis. Companies in various countries which I will mention later have established the overall low pricing in our domestic market. Large volume purchasers in the U.S. market obtain consistently "low price" quotations from foreign manufacturers of tubeless tire valves and then leave the U.S. industry with an "either-or proposition". Either they accept the foreign competition's low price or lose the business! If the U.S. company manufacturing tubeless tire valves wants to stay in business, it will either meet the foreign price or all of the future U.S tubeless tire valve purchases will be from foreign sources. At the present time, these seven U.S companies are holding on for dear life, but how much longer this can go on is a good question. My bill tries to address, in a fair manner, this situtation. My bill does not attempt to set a quota or to keep out foreign tubeless tire valves from our market. It merely seeks to put things on a "fair trade" basis by raising the duty to create a more realistic pricing practice and to protect an endangered U.S. industry.

One of the companies producing tubeless tire valves is my constituent, the Nylo-Flex Manufacturing Company, of Mobile, Nylo-Flex is typical of a small business in the United States. It is a company that is hard working and has tried to be a good citizen of Alabama and the U.S. In fact, Nylo-Flex has not sat on old equipment and manufactured it product in an antiquated manner over the past few years. Despite competition—from abroad as well as in the U.S.—Nylo-Flex has constantly ungraded its machinery and invoked the most modern techniques in producing tubeless tire valves. While Nylo-Flex can meet U.S. competition, it cannot meet foreign competition at consistently lowering prices—prices which cannot, technically under existing law, be legally proven as having been "dumped."

Nylo-Flex recently brought an action before the International Trade Commission, but did not have large enough resources to find actual proof of dumping. It is difficult for a small company to spend hundreds of thousands of dollars to scour foreign countries with detectives to obtain evidence of dumping or other unfair trade practices. However, in a recent unsuccessful ITC action, the International Trade Commission did state in September of last year the following:

"The financial data for U.S. producer of TTVs shows a steady decline for the entire period of this investigation. Operating income dropped from a profit of $1.4 million in 1977 to a loss of $.7 million in 1981."

"Operating income as a percent of net sales dropped from 7.1 percent in 1977 to a loss of 3.3 percent in 1981. The 1982 data show a further deterioration."

"The five firms aggregate tubeless-tire valve operation was profitable in each of the years during the 1977–79 period and unprofitable in each of the other reporting periods. Operating profit, however, declined substantially during 1977–79, ranging from $1.4 million, or 7.1 percent, of net sales in 1977, down to $382,000, or 1.8 percent, of net sales in 1979. The five firms sustained aggregate operating losses of $311,000 (1.8 percent of net sales), in 1980 and 1981. The five firms reported an aggregate operating loss of $733,000, or 11.1 percent of net sales during January–April 1982, compared to an operating loss at $79,000 or 1.3 percent of net sales during the corresponding period of 1981. In 1980 and 1981, four of the five firms, reported losses on their tubeless tire valve operation and during January–April 1982, all five firms reported losses."

"Cash flow generated from U.S. producers' tubeless-tire-valve operations declined yearly during 1977–81, from $1.7 million in 1977 to $59,000 in 1981 (table 18). The five firms reported a negative cash flow of $495,000 for January–April 1982, compared with a positive cash flow of $146,000 for the corresponding period of 1981."

Despite large losses, the domestic industry has decided to try to meet importer-rigged prices. In so doing, it has made a commitment to modernize plants and make them more efficient. A great deal of borrowed capital has been spent with the intent of meeting these foreign prices. The ITC ruling, in fact, stated the following:

"*Investment in productive facilities.*—Five firms supplied data relative to their investment in productive facilities used in the manufacture of tubeless-tire-valves during 1977–81. The five firms' investment in such facilities, valued at cost, increased by $998,000 during 1977–81. The book value and the replacement value of such assets increased $497,000 and $2.9 million, respectively, during 1977–81 (table 22)."

TABLE 22.—INVESTMENT IN PRODUCTIVE FACILITIES BY 5 U.S. PRODUCERS OF TUBELESS-TIRE VALVES, AS OF THE END OF THE ACCOUNTING YEARS 1977–81

Item	1977 [1]	1978	1979	1980	1981
Original cost	$11,852	$11,806	$12,022	$12,873	$12,850
Book value	$7,351	$7,722	$8,926	$9,234	$7,848
Replacement	$21,636	$21,710	$21,145	$24,945	$24,572
Ratio of operating profit or (loss) to (percent):					
Net sales	7.1	6.1	1.8	(1.8)	(3.3)
Original cost	11.4	10.5	3.2	(2.4)	(5.3)
Book value	18.4	16.0	4.3	(3.4)	(8.7)
Replacement value	6.2	5.7	1.8	(1.2)	(2.8)"

There are six types of tubeless tire valves involved in this market; the 413, 414, 415, 418, 423 and 425 are identifying trade numbers for these valves depending on length and circumference. Briefly, the 413 is 1½ inches long while the 418 is one inch longer. Currently Nylo-Flex is selling the 413 at between 12½ cents to 13 cents each. A year ago, when the International Trade Commission investigated this case, Nylo-Flex's price was 15 cents per valve. The imported price has dropped to below Nylo-Flex's price, which is consistent with past import pricing practices of an unfair nature, to now be between 11 cents to 12 cents per valve. Flex's current cost of these valves, because of modernization and efficiency techniques, is sadly 14.2 cent per valve. The 418 valve sold a year ago for 16 cents each, but now Bylo-Flex sells these valves at between 14.2 cents and 14.5 cents a piece. The import valves of course, of this same size, has now dropped to 12½ cents to 13 cents, again undercutting the

Nylo-Flex and other U.S. manufacturers' prices. Nylo-Flex's cost for the 418 valve is 15.2 cents per valve. Comparable price disparities occur as well for the other four valve sizes. It is a "no-win" situation with the U.S. industry hanging on for dear life, hoping that in some manner the U.S. Government will insure that only fair trade takes place. We do not want ill-advised protectionism—only fair trade!

It is simply not fair that a U.S. company or industry is forced to sell its products at a loss simply because foreign competition can always undercut it—price wise—on a daily basis. West Germany is by far the largest exporter of these valves to the U.S. market and the biggest culprit in this unfair pricing policy that I have spelled out today. Other countries such as Japan, Taiwan, Romania, and Turkey are getting in on the act.

My bill, as stated, does not seek a quota or an exclusion from the U.S. market for imported tire valves. It merely adjusts the customs duty upward to 15 percent Ad Valorem (Column 1 Rate) to make the competition more fair. Furthermore, my bill provides a specific classification for tubeless tire valves under the Tariff Schedules of the United States where it belongs—under parts for tires! Currently these valves are classified under the TSUS under item 692.32 as other parts of automobiles with a low 3.6 percent Ad Valorem rate of duty. Item 692.32 is not a proper place in the Tariff Schedules for these imports as it is a catch-all basket provision for hundreds of articles, none of which are articles or parts of tires!

In order to save this U.S. industry, which is important to our country today and maybe absolutely essential in time of an emergency, I ask the U.S. Senate to move very expeditiously on this bill.

Statement of Gunter von Conrad, Counsel, EHA Ventilfabrik*

INTRODUCTION

This Statement is submitted by counsel on behalf of EHA Ventilfabrik, Wilhelm Fritz KG, Postfach 1261, 6052 Muehlheim (Main), West Germany (EHA), pursuant to the notice published by the Subcommittee on Trade of the Committee on Ways & Means under date of March 12, 1984 (Subcommittee on Trade No. 29).[1] EHA respectfully opposes enactment of H.R. 4695, a bill to increase the duties on tubeless tire valves.

THE PRODUCT AND ITS MARKET

Tubeless tire valves (TTVs) are divided into two broad product categories, "snap-in" valves and "clamp-in" valves.

A snap-in TTV consists of a cylindrical brass tube into which is inserted a needle valve core designed (a) to permit the free flow of air when properly parts,depressed, and (b) to prevent the escape of such air when returned to its original inert position. The entire structure is encased in welded rubber with a large bulbous knob at one end, the opposite end of the brass tube being exposed and machined to accommodate a screw-on plastic or metal cap; the purpose of the large flange or knob at one end is to ensure a sufficiently secure positioning so that the valve upon insertion into the tire rim will be capable of withstanding the necessary air pressure forces without "blowing out."

By contrast, clamp-in TTVs are comprised of two independent components which are joined to one another after placement in a motor vehicl, such that the entire valve is "clamped" in place by a screw-on action. Valves of this type are generally required for heavy truck and equipment purposes, whereas the snap-in variety, described above, are used only in passenger vehicles and light truck applications.

For import identification purposes, tubeless tire valves are included in item 692.32 of the Tariff Schedules of the United States (TSUS), a residual "basket" category encompassing several types of motor-vehicle parts, and are dutiable at the following ad valorem rates applicable under the duty rate schedules which resulted from the

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*Prepared for EHA Ventilfabrik, Wilhelm Fritz KG of Muehlheim (Main), West Germany, by Barnes, Richardson & Colburn, Washington, D.C. 20006 and New York City 10016, a registered foreign agent under the Foreign Agents Registration Act. This Statement and the Registration Statement of Barnes, Richardson & Colburn are on file with and may be inspected at the U.S. Department of Justice, Washington, D.C. Registration under the Act does not indicate endorsement by the U.S. Government.

[1] Appropriate registrations of counsel are on file with the Clerks of the House and Senate under the Lobbying Act, and with the Department of Justice under the Foreign Agents Registration Act of 1938, as amended.

Multilateral Trade Negotiations pursuant to the Trade Act of 1974 (P.L. 93-618, 19 USC § 2101), and ratified under the Trade Agreements Act of 1979 (P.L. 96-39, 19 USC § 2501):

[In percent]

TSUS item		1980	1981	1982	1983	1984	1985	1986	1987 and thereafter
	Chassis, bodies, (including cabs), and parts of the foregoing motor vehicles:								
	Other:								
692.24	Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery.								
	Other:								
692.29	Automobile truck tractors if imported without their trailers.								
692.31	If Canadian article (see headnote 2 of this subpart).								
	Gasoline fueled								
	Other								
692.32	Other	3.9	3.8	3.7	3.6	3.4	3.3	3.2	[1]
	Other								

[1] All rates are ad valorem. Excerpted from: "Summary of Trade and Tariff Information, Certain Motor-Vehicle Parts," USITC Pub. No. 841 (Aug. 1982).

Tubeless tire valves are manufactured and assembled by seven establishments in the United States, and are imported from several countries including, at present, West Germany, Italy, Turkey, Japan and Romania.[2] The principal foreign supplier in EHA Ventilfabrik of West Germany, whose annual imports have accounted for approximately 11 million units, representing about 7 percent of U.S. domestic consumption.

The U.S. market for tubeless tire valve products consists of automobile manufacturers (original equipment manufacturers = "OEM market") and wholesalers, distributors, jobbers, and retailers (the "aftermarket"). While American manufacturers sell to both the OEM market and the aftermarket, EHA's participation in the United States has been, and continues to be, limited to the aftermarket.

IMPORT INVESTIGATIONS REGARDING TTVS

During the past two decades some seven separate investigations have been undertaken to analyze imports of tubeless tire valves. In each instance, Nylo-Flex Co. of Mobile, Alabama, one of the smaller U.S. manufacturers, was the petitioning party. The first two charges against imports were dismissed by the U.S. Customs Bureau with records, if any, buried in the archives. There followed five cases of record since 1966.

An investigation was instituted in 1966 under the Antidumping Act of 1921 against TTVs from Germany but was discontinued in 1967.[3] EHA committed itself to continue to pursue fair value pricing policies, a practice it has always followed, and practice EHA scrupulously kept.

A further antidumping investigation, for which records are available, was filed against imports from Italy in 1967 and ended in 1968 with a determination of sales at not less than fair value.[4]

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[2] Source, USITC Staff Report; "*Tubeless Tire Valves,*" Report to the President on Inv. No. TA-201-46, USITC Pub. 1286 (Sept. 1982).

[3] 32 Fed. Reg. 7293, May 16, 1967.

[4] 33 *Fed. Reg.* 3652, Mar. 7, 1968.

The next antidumping case involved TTVs from Canada. This investigation resulted in a determination of no injury by the U.S. Tariff Commission.

An additional antidumping investigation was triggered by a Nylo-Flex complaint against EHA in 1981. Again, Nylo-Flex' allegations were disproved by the Department of Commerce in both its preliminary and final determination of no sales at less than fair value.[5]

The most recent investigation of TTVs followed six months after the conclusion of the 1981 dumping case against EHA and was brought as an "escape clause" investigation under Section 201 of the Trade Act of 1974, based upon a petition again filed by Nylo-Flex. In large measure, the allegations focused on imports from the principal supplier, EHA of West Germany.[6] This investigation resulted in a determination by the U.S. International Trade Commission that tubeless tire valves are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury.

In summary, the allegations of Nylo-Flex that imports, especially those of EHA, were unfairly priced, unfairly competed, or injured the United States industry were consistently rejected by the appropriate U.S. Government agencies who investigated these charges. These allegations of Nylo-Flex, which were proven groundless in each instance, have resulted in substantial costs and detriment to EHA, to the extent that the use of U.S. import relief statutes by Nylo-Flex must be considered an abuse, especially in light of the circumstance that investigations can be and have been initiated at little or no expense to Nylo-Flex while entailing substantial necessary costs for defense on the part of EHA. The introduction of the present legislative proposal, H.R. 4695, must therefore be considered a continuation of the attempts to harass imports, especially those of EHA. As every investigative record demonstrates, there is no economic or legal justification for the imposition of increased tariffs on TTVs. H.R. 4695 Should Not be Enacted.

As was developed in the most recent U.S. International Trade Commission investigation in the context of the "escape clause",[7] Nylo-Flex, the protagonist of past unfair import allegations, has been most severely affected by the fact that the large domestic producers of OEM-market valves have entered the "aftermarket" which Nylo-Flex serviced. This shift by the largest producers occurred at a time when OEM sales fell off due to the decline in U.S. automobile production which accompanied the latest recession. Moreover, EHA prices have consistently been found to be fair, and many U.S. purchasers of valves have indicated that they purchase EHA's tubeless tire valves because of the recognized high quality of EHA's product and their own desire to develop multiple sources of supply, a prudent business choice.

The duty increase proposed by H.R. 4695 would raise the currently effective 3.4 percent ad valorem rate by more than 300 percent, to 15 percent ad valorem. In terms of the final rates negotiated under the "Tokyo Round" and scheduled to take effect in 1987 and remain intact thereafter, the proposed 15 percent rate would constitute a near quintupling of duties. Such a change in tariff treatment will have a chilling effect upon purchasers who rely on quality tubeless tire valves produced in West Germany as an alternate source of supply and would act as an effective embargo of tire valves exported from Germany to the U.S. market.

Such a result would be contrary to every principle of trade policy which has been announced by the Congress and the U.S. Government under the Trade Act of 1974, the Trade Agreements Act of 1979, and which has served as the basis for Multilateral Trade Negotiations. America's trading partners would have instant rights to protest the proposed duty increase before the General Agreement on Tariffs and Trade; they could and undoubtedly would demand compensation, or would be entitled to take retaliatory action. At a time when the United States is going forward with much-needed programs for trade and export expansion, duty increase actions which have been proven unnecessary, such as this one, and the negative results they engender, are not in the best interest of the United States or of its industries.

While the TTV industry—in the universe of all manufacturers and commodities in international trade—is relatively modest in size, the proposed action would serve as evidence to West Germany, and to the world, that the commitments entered upon by the United States during trade negotiations amount to something less than an assurance of future treatment and, worse, such action would serve to undermine the entire international trade position of the United States. The proffered legislation would invite particularly bitter reaction in light of the fact that there is demonstrable on-the-record proof, in the most recent import investigation triggered by

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[5] 46 *Fed. Reg.* 58133, Nov. 30, 1981.

[6] *Tubeless Tire Valves,* TA-201-46, at A-9 (Sept. 1982).

[7] "Tubeless Tire Valves," TA-201-46, USITC Pub. 1286 (Sept. 1982).

Nylo-Flex, that there is no justification for anti-import measures under the "escape clause" of the General Agreement on Tarriffs and Trade.

H.R. 4695 WOULD HAVE ONLY DETRIMENTAL EFFECTS

H.R. 4695 proposes to provide a special "break-out" for tubeless tire valves from the "basket" category of automobile parts in which TTVs are now classified. Such a break-out would entail a substantial administrative burden on various departments of the United States Government and on industry insofar as it will require the review, compilation, and reporting of commercial and international trade documents, invoices, and statistics. On the other hand, while the impact of the proposed duty rate would be significant for importers, effectively embargoing most TTV imports from industrial nations such as Germany, the revenue effects would be negligible, or possibly negative, if importations decline substantially or cease. Moreover, the effect on American consumers, particularly those in the aftermarket, that is, individual automobile owners and their repairmen, would be to increase the costs or to impair the availability of competitive quality tubeless tire valves.

The United States industry, expecially the manufacturers who sell to both the OEM market and the aftermarket, controls an overwhelming portion (90 percent) of the U.S. market. With such market dominance, it is difficult ot accept the proposition that the U.S. TTV industry is about to relinquish its position or disappear from the market. It is known that some companies have made substantial capital investments in TTV production and are effective competitors in both the American market and, through their foreign subsidiaries including affiliates in England and Germany, in international markets.

SUMMARY

There is no economic, legal, or policy basis which justifies an increase in duties on tubeless tire valves to 15 percent ad valorem, or an abrogation of international commitments made by the United States during trade negotiations in which the U.S. made binding commitments for duty reductions, and received quid-pro-quo international trade concessions.

For the foregoing reasons, H.R. 4695 should not be enacted. It is respectfully urged that the Subcommittee on Trade of the Committee on Ways & Means report unfavorably on this proposal to the full Committee on Ways & Means.

Congress of the United States,
House of Representatives,
Washington, DC., March 30, 1984.

To: Mr. John J. Salmon.
From: Representative Jack Edwards.

This material is submitted in behalf of: Mr. Howard Hochman, President, Nylo-Flex Manufacturing Co., Inc., P.O. Box 9913, Mobile, AL 36691.

Mr. Hochman desires that this material be included in the hearing record as his testimony in support of H.R. 4695 a bill to amend the Tariff Schedules of the United States to impose a duty on tubeless tire valves.

I would appreciate your consideration of his statement in support of my bill.

IMPACT OF IMPORTS ON AMERICAN INDUSTRY AND EMPLOYMENT

HEARINGS

BEFORE THE

GENERAL SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 478 and H.R. 479

BILLS TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938 TO ESTABLISH PROCEDURES TO RELIEVE DOMESTIC INDUSTRIES AND WORKERS INJURED BY INCREASED IMPORTS FROM LOW-WAGE AREAS

PART 1

HEARINGS HELD IN WASHINGTON, D.C.

APRIL 5, 12, 13, 18, 19, 26; MAY 2, 3, 10, 11, 17, 1967

Printed for the use of the Committee on Education and Labor

CARL D. PERKINS, *Chairman*

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Mr. **Scherle.** No questions, Mr. Chairman.

Mr. **Nauman.** It was a privilege to appear before your committee.

Mr. **Dent.** A privilege to have you. You are with the Georgia Marble Co?

Mr. **Nauman.** Yes, sir.

Mr. **Dent.** I think your guiding light down there is my namesake.

Mr. **Nauman.** Also happens to be Mr. John Dent.

Mr. **Dent.** John Dent, no relative whatsoever.

Mr. **Nauman.** John W. Since you have mentioned that, I might take 1 second to tell you, I don't know whether you have heard this, that John was in Pittsburgh one day, and he had a call, he registered at the hotel, John W. Dent, he had a call from an AP reporter, and it was in regard to some legislation that you had spoken about, and he wanted to confirm what you had said, and he insisted that our John Dent was you.

Mr. **Dent.** He should have given them confirmation. He would probably have done better than I did.

Mr. **Nauman.** He kept calling back and calling back. John has talked about that many times. In fact, he wants to come and meet you.

Mr. **Dent.** Thank you again.

Mr. **Hagerich.** Thank you.

Mr. **Dent.** The next witness is Howard S. Hochman, vice president of the Nylo-Flex Manufacturing Co., Mobile, Ala.

STATEMENT OF HOWARD S. HOCHMAN, VICE PRESIDENT, NYLO-FLEX MANUFACTURING CO.

Mr. **Hochman.** Gentlemen, thank you for inviting me. I am a small manufacturer of tire valves, valve hardware, and tire repair materials. My industry is rather complex as far as "dumping" is concerned. The three largest manufacturers of valves in the United States are (1) Schrader, a division of Scoville Brass Co., who owns plants in England, France, Canada, and Mexico and, according to authoritative sources in Europe, controls EHA of Germany; (2) Dill, a division of Eaton, Yale & Town Manufacturing Co., who also owns Allegro of Germany, and (3) Bridgeport Brass Co., a division of National Distillers, who owns Bridgeport of Ireland and Zenit of Bergmo, Italy.

EHA, Allegro, and Zenit are the major foreign manufacturers who are dumping tire valves into the United States.

I would like to disgress from my written statement, gentlemen, and say that I made a dumping complaint last year before the Customs and Appraisals, which is now in Treasury.

Mr. **Dent.** Good luck to you. You will need it.

Mr. **Hochman.** I will get into that. Though the foreign valves probably do not account for more than 10 to 15 percent of the total valves sold in the United States, this includes OEM, tire, and automobile manufacturers, the effect of their pricing controls the pricing of domestic valves.

This has made American prices fall from over 18 cents in 1963 to 9 cents in 1967. All the while wage rates have gone up 30 to 40 percent and raw brass, our basic material, has gone up 33⅓ percent.

Granted, we have all gone to automation, which has lowered our labor somewhat, but this does not affect our overhead, taxes, and so forth. We are currently selling at a loss or just breaking even to keep our customers from buying the imports.

You see, gentlemen, it does not make any difference if we are 10 percent or 100 percent or as far as that goes, a thousand percent, higher than the imports, because our customers will only buy American goods if they are no more than 5 percent higher than the imports. Above this they won't buy.

Gentlemen, we are as efficient now, in most respects, as any of our American or European competition. If we go to more and more automation in order to compete with the foreign companies, eventually we can hope for a total reduction in price of about 3½ mills, but at a cost of reducing our employées by 25 percent. What does this do for the American unskilled worker, where does he go? On welfare?

And incidentally we have had to let about 10 employees go, who are now collecting unemployment compensation, and who will eventually go on welfare.

The big question here, of course, is, Why can't we compete with foreign imports? The Europeans are not smarter than we are, but they have again many advantages. One is a rebate of 8 to 14 percent in their turnover tax. Because Europeans do not voluntarily report their income for tax purposes, like Americans, the German and Italian Governments have levied a tax on merchandise produced in their countries, which is equivalent to our corporation and income taxes.

This incidentally is the only way the government can control the amount of revenue they get, because in Europe, as in many other countries, most people falsify records about their income, they have different banks, Swiss banks, and it is easy to jump over the border, especially in Europe, to a Swiss bank and deposit your money, and, thereby, not pay any taxes. The above tax, levied on merchandise produced, is refunded when a foreign company exports its merchandise.

Incidentally, I wrote a letter, I believe I might have sent you a copy, when I came back from my trip to Europe with this informaton, facetiously asking for rebate on my corporate taxes, so I can compete in the foreign market.

I have not heard from them yet.

In view of this rebate, it is therefore really quite simple to see how the Europeans, especially Germany and Italy, can dump tubeless valves into the United States. With their subsidies, rebates, and so forth by reducing their prices only 5 to 10 percent they can undersell us by 20 percent.

On May 10, 1966, I wrote a letter to the Department of Commerce asking them how I could compete with the foreign importers when they have:

1. Much lower wages than the United States;
2. Subsidies from their government;
3. A lower freight rate to the United States; and
4. Eight and one-half percent duty on their products into this country.

Since, in the automotive trade there is nothing in our favor for exporting, I can only list our disadvantages:

1. Higher wages;

2. Lack of Government subsidies to aid our export;

3. Higher freight rates from America to foreign countries on the same commodity, on the same ship. In other words from Hamburg to Mobile, suppose freight on an item cost a dollar; if I turned around and shipped this back to Hamburg, it would cost me about $1.40. This is not necessarily on a foreign vessel. It can be an American ship or it can be a foreign ship. It makes no difference; and

4. An impossible tariff situation.

While foreign countries are enjoying an 8½ percent duty on their goods being shipped into the United States, below you will see what they are charging us on products we try to ship into their countries:

Argentina: approximately 150 to 200 percent.
Austria: tire valves, 18 percent; patches, 28 percent; both plus 8½ percent ad valorem equalization tax rate.
Brazil: 100 percent on both valves and patches.
England: valves and patches, 20 percent, plus 15 percent temporary import charge.
Finland: patches, 13 percent per kilo; tube valves, free; tire valves, 15 percent per kilo.
Germany: patches, 13 percent duty, plus 6 percent turnover tax; valves, 7.7 percent duty, plus 6 percent turnover tax.
Norway: patches, 20 percent. Did not reply on valves.
France: patches and valves, between 18 and 22 percent.
Netherlands: patches, 20.1 percent, plus 8 percent turnover tax; valves, 10.1 percent, plus 5 percent turnover tax.
Belgium: valves, 10.1 percent, plus 6 percent turnover tax; patches, 16.9 percent to 17.6 percent, plus 9 percent turnover tax.
Honduras: valves and patches, $0.075 per kilo, plus 8 percent consular duty.
Japan: patches, 15 percent; valves, 30 percent.
Italy: patches, 18 percent; valves, 16 percent, plus 50 percent administrative fee; 4 percent general entry fee; 3.6 percent equalization fee.

Now this is why I spent 3 weeks in Europe in February. You see, the Europeans enjoy something that we do not have. According to the Federal Trade Commission, I cannot discuss prices with my competitors, if I want to stay out of Leavenworth. But in Germany, or in the EEC Common Market, with their cartels, they get together and they say, "you take this large customer, you take this one, you take that one, we will maintain this price.".

Mr. DENT. That is the Common Market.

Mr. HOCHMAN. That is right. My particular item is a tubeless valve that goes in your wheel. The main countries producing these are Germany and Italy, so in the Common Market, they keep everything clean.

There is no dumping, the duties are so very small. Incidentally, within 1 year, according to three people, one in Brussels, one in Cologne, and one in Munich, the duties will be removed from the products of all members of the Common Market, but will remain the same or go up on American products.

They have made their profit on the manufacture and the distributing in the EEC countries. But they need more volume to keep their plants efficient.

Whether it is the United States or it is the FTA countries, which I visited all through Scandinavia, they dump. Germany and Italy are known for dumping anything they can get their hands on, in order to get the rebates back from their government, especially now that they are in a recession, and they have got to boost their economy.

In other words, if I established a factory in Argentina, I could export to the United States for 8½ percent, but if I want to export to Argentina, it is 150 to 200 percent, and as you go down the line, you see what we have.

Germany is 18 percent, Italy, which is a manufacturer of valves, has 16 percent, plus 50 percent administrative fees. They have a lot of clerks it seems.

Mr. **Dent.** Then they have 4 percent general entry fee, and 3.6 equalization fee.

Mr. **Hochman.** That is right. So you just can't attempt to export.

Mr. **Dent.** I don't want to disturb you over your future prospects, but it may interest you to know that the Common Market has prepared a time bomb to go off right after—this is for the record, and the first time it will be said publicly—but a time bomb on this trade business to go off within a very short time period after the Kennedy round is over, if they concede and go along on the across-the-board tariff reductions.

It is known as an added-value tax. This added-value tax, will be all internal tax over which we have no control, nor does GATT. But it will be upon the differentiation of the cost of manufacturing and the selling price of the product.

Under that added-value tax, they now have amended their agreements between the countries that they will add the added-value tax to American imports coming in, after they reduce tariff, which will more than make up the differentiation on the tariff reduction, if they give us one at all.

So the whole Kennedy round will end up in the biggest farce that has ever been pulled internationally in the history of the world.

Mr. **Hochman.** Before he died, I had about three meetings with the Christian Herter committee, and I have been fighting this thing for 1 year, and as we go through here, I will explain that.

One thing, I do want to digress.

Mr. **Dent.** You are still an American manufacturer without foreign sources of production?

Mr. **Hochman.** Unfortunately, I am a small businessman, and I just have not got the capital to go overseas. Although as we get into this, I will show you how I might be able to do it.

Mr. **Dent.** In other words, you are telling this committee of Congress that you are trying to work out some manner in which you can shift your production out of this country into another country in order to survive in the business.

Mr. **Hochman.** I am being facetious. No. I think as we get into this, I will explain. No, I am not moving, but I will show you what has happened. Relative to this, gentlemen, the Agency for International Development is the name you were looking for. I have their books here. Incidentally, while in Europe, I traveled in about nine or 10 countries. We have a pretty big nation over here, and it is supposed to be powerful, and I am not in the habit of being laughed at, and I was not laughed at personally, but I was laughed at as being an American.

They say, "Why are you people so scared of us?" And this is in Belgium, a small country that we could probably put in the space of the city of New Orleans. And I said, "Why?" and he said, "You know, every time we get a little problem here and we complain to our Congress"—or Parliament, or whatever they call it—"They get all exctited and they want to make a name for themselves.

"They start twisting your Ambassador's fingers, and then you give us a concession. All we have got to do is yell a little louder, and you give us more."

He said, "You know, we just don't understand you. We can do anything to you, but when you do something to us, we put up a squawk and you stop right away."

And this is true all over.

12 **Mr. Scherle.** Mr. Chairman, if I may interrupt for a moment, I think you have answered your own question on page 4, and I fought this thing for a long time, but I am glad to see it in print.

I have been told by the State Department officials that diplomacy and relations with foreign countries are of much more importance than a small industry as a whole.

In other words, we are more concerned about our global strategy in regard to peace and appeasement and diplomacy that we are the American people and our own economy.

Mr. Hochman. That is right. I was told, especially in Germany, of course, this is their creed. In most countries, and I am repeating what other people have told me, in all of Europe, we believe that if we are peaceful, or show our good side, that people will come over to us, and I was told in so many places I just can't name—that the only thing that they respect us for, or respect any one for, is determination, strength.

The only country that has respect for us in Finland, because we did not lend them any money that they did not pay back.

The countries that we have given money to, which they have never paid back, do not have any respect for us, and feel that it is open season. They are indebteded to us, they don't like it, they dislike us for it.

Finland does not. They are one of our greatest allies. I have only been there once and I really only know a few people there from just that one time.

Mr. Scherle. Pardon me for interrupting. Do you have a letter that would coincide with your statement on page 4 that I just quoted?

Mr. Hochman. I have it.

Mr. Scherle. If you do, I sure want it.

Mr. Hochman. I have it mixed in with another letter. My copy is numbered, with names. Now if you ask me, I would rather give it in closed session, because I feel that it might cause some repercussions to me, since I am in a dumping action right now.

Mr. Dent. We feel that it might, too, and we don't want to know the names, either.

Mr. Hochman. All right, fine.

In the Kennedy round, from what I have learned in two or three years I have been with this thing, they have not accomplished more than 5 percent of their goals. They have agreed on procedure, which is going to end in a few months.

Mr. Dent. No, it is not.

Mr. Hochman. Or a couple weeks, rather.

Mr. Dent. It won't end.

Mr. Hochman. It won't. All right.

Mr. Dent. We will extend it.

Mr. Hochman. My industry cannot—this is important here—my industry cannot complain as a group about dumping, since, as I have explained, 75 percent of the American valve industry is controlled by companies whose foreign divisions are doing the dumping into the United States.

It would naturally be impossible for them to bring dumping action against foreign companies who are dumping, because though they might like to stop their competitors' foreign divisions from dumping, any action on their part would also be stopping their own foreign divisions from dumping.

Incidentally my industry only has five manufacturers, these three big ones, and two other smaller manufacturers. In the large industries, the parent company is only concerned with whether the company as a whole is making a profit.

They are not concerned about the division from which the profit is coming.

And this is the thing—the whole thing in a nutshell. Incidentally, many of these companies are now bringing in foreign parts, made in Germany, made in England, or anywhere, putting them on inner tubes that are made by rubber companies, for OEM and sold as American goods, similar to your brassieres, only you don't even have a box on it.

With the lowering of both the foreign tariffs and our own, and on an equal percentage but from different bases (reference Kennedy rounds) in other words, the tariffs, say, for Italy, are roughly about 70 or 80 percent.

They will reduce that to 35 percent, and they will take our 8½ percent and reduce it to four and a half. They might as well take that 35 percent and run it up to a million percent, because it won't do me any good. It is still too high.

Mr. Dent. Actually the Kennedy round will only have to do with the established rates of tariffs, and has nothing to do with the so-called border taxes such as equalization taxes and entry taxes, and license taxes.

Mr. Hochman. That is supposed to be in the GATT and also in the antidumping.

Mr. Dent. I understand, but the Kennedy round will be a straight across-the-board percentage cut as you say, from different bases.

Mr. Hochman. From different bases, and to me, they are in the reverse of the order.

Now what I am going to read now will refer to the foreign financing of foreign business in foreign countries. With the lowering of both the foreign tariffs and our own on an equal percentage, but from different bases, it is no wonder that Dill, Schrader, and Bridgeport are now importing back into the United States.

In fact when I was in Washington last October an official of the Agency for International Development, incidentally, this is the Agency whose name you were looking for before, whom I had seen in order to try and find out what moneys were given to my foreign competition, said he was sorry about my problem, and sympathized with me, and asked me too, in order to help me, "Would you be interested in locating a plant in an underdeveloped country in order to get cheaper labor? If so the American Government would finance you."

That was his answer to my problem. And this was with my tax dollars and your tax dollars, to finance a company to go overseas to employ foreign labor to compete for the tax dollar that should have been here in the first place.

Mr. **Dent**. Did he tell you that?

Mr. **Hochman**. And—yes, sir.

Mr. **Dent**. And this is a direct quote.

Mr. **Hochman**. Verbatim.

Mr. **Dent**. He said if you would be interested in locating a plant in an underdeveloped country in order to get cheaper labor, the American Government would finance it?

Mr. **Hochman**. That is right. I tried to subpena a record of the Marshall plan of all foreign aid going into Germany and Italy, to find out if the moneys do go to these plants, which I had heard while in Europe, and before I went to Europe, that they received; but I was told by this gentleman that the moneys were given to the governments and the government passed it out, so that the American Government does not have the records; so I went into the long story of all the problems I have, and he said, "Well, you know many companies have done this, have gone to foreign countries, and established plants."

I felt like asking whose side he was on.

Mr. **Dent**. Go ahead.

Mr. **Hochman**. A Department of Commerce spokesman wrote me that even though the German and Italians have lower wages, government subsidies, tax rebates, low freight rates, and so forth, that American ingenuity continues to prevail.

Gentlemen, I submit it is not American ingenuity, in the true sense but American big business establishing companies overseas and taking advantage of U.S. financing and foreign tax concessions, as well as our own low tariffs, and their dumping of exports back into the United States, that has prevailed.

We have big government and big business doing the same thing.

We brought antidumping proceedings against EHA of Germany and Zenit of Italy in April 1966. To date our dumping action has only moved from Customs and Appraisals, Mr. Marra's division, over to Treasury.

I talked to Mr. Matthew Marks, Deputy Secretary of the Treasury and he informed me it will still be some weeks before they will be able to let me know which way Treasury has ruled. He said he would do all he could to hasten this ruling.

At this point I do want to say, though, that Mike Wallen, Mr. Marra, and his whole division has been more than cooperative in helping my company, but they state they have to follow the laws to the letter and this is what takes so long.

However, if—and this is a big if, with the present foreign policy of the United States—they rule in favor of Nylo-Flex there will be a hearing in which the large foreign divisions will appeal the decision.

I, as a small businessman, am unable to afford approximately $25,000 to $50,000 for handling antidumping proceedings. And this is a conservative estimate incidentally for handling antidumping proceedings. So far I have carried all of the antidumping fight for my industry, but how can any small business fight dumping when so few can afford the $50,000 for the proceedings?

Incidentally, I would like to interrupt here. I have a good book that Mr. Marks sent me, written by Mr. Jim Hendrix on dumping, and in it, out of the 300 cases that went before the committees, the Customs appraiser, Treasury, and the Tariff, eight were ruled no dumping, 200 were thrown out, 62 were ruled no price discrimination. And if you say that you will stop dumping in the United States, you are off scot free.

Well, I was told in Germany that this is the main thing that they have to go on. They feel that if they can dump in the United States for 2 or 3 years, and even if they are found guilty, what have they lost? They again have ruined a market, they have gotten a lot of volume, they have expanded their plants, and they have made a good profit.

Mr. DENT. In the case of the cement industry, it is even more detailed than that. They dump from one country, the same company. Cement is a product that is universal.

Mr. HOCHMAN. That is right.

Mr. DENT. They get an antidumping case brought up, and right before it is adjudicated they withdraw their company from American sales from that particular source, and start shipping from another source.

Mr. HOCHMAN. Well, as a manufacturer in Germany, I can, from what I have been told, and this was told here in the United States and overseas, I could have another company, unrelated to me, as an arm's length company; establish an export firm, sell at a loss, because I am making money on my protected account, sell at a loss to him, so he can sell at a certain price to the United States, and still not violate our antidumping laws; and this is what is being done.

And there is no way to combat it. In my case, I have one company that has done this, and I can't fight it. It is impossible, unless the law is changed; and this is impossible, under the present situation.

I would like to quote, I have tried a test case in Canada, and within 6 weeks the Canadian Government wrote me, saying that they were going to levy a charge for the difference between my American price and my export price to Canada.

I did this on purpose. The Canadian Government acted only on the evidence of an invoice. All they asked was that I supply an invoice and I could not, so without anyone preferring charges they slapped an antidumping ruling on me.

Now this is something that it is hard for someone on the outside to appreciate. I have been living with this thing for over a year. Actually, 2 years. I have been fighting the dumping for 1 year. Now in other words, the Canadians, on their own, have slapped a dumping charge against me, or my customer—not against me, but my customer—in only 6 weeks.

In our country there has to be charges files, and I will get into it. I would like to quote from a letter I have received from the Office of Special Representative of Trade Negotiations here:

> By and large I think it is clear that U.S. industries and U.S. firms both large and small have shown themselves to compete effectively with imports.

> We have constantly had a surplus balance of trade over a number of years. The productivity and efficiency of U.S. firms have enabled them to compete against imports even though such imports are produced abroad with governmental assistance and often with lower wages.

If you return to yesterday's Congressional Record, the number is S6031, here it is right here, refuted against that statement.

Mr. Dent. Whose speech was it?

Mr. Hochman. Mr. Morse. And over here, I have an AP bulletin, dated May 24, 1966:

> A ten percent drop in exports and a three percent rise in imports, reduced the favorable U.S. trade balance to a seasonably adjusted annual rate of 4.1 billion during April.

This will coincide with what the gentleman in the brassiere industry said. There are different products. What we are shipping are foodstuffs, machinery to make the products to be brought right back into the United States, and war materials.

I have a letter in my portfolio where I had one Department of Commerce official take issue with me, and for some odd reason, I was proven right by the Government, and he was wrong, and this is unusual.

But how can we compete with them when the Department of Commerce sent me statistics showing that Italy's semiskilled labor is 50 cents an hour, while our unskilled is a minimum of $1.40, and our semiskilled is $2.50 to $3.

Germany's skilled machinists make $1 to $1.25 an hour; the American rate is $3 to $4.50. And on the west coast, I have not got it in my statement, $7.50 an hour. In order to compete, must I move my factory to Europe or an underdeveloped country as the Agency for International Development has suggested, where the wage rate is $1 to $1.50 a day?

What happens in this case, to small business, the community, and the unskilled labor? Where do you go? Sir, I contend we have not effectively competed with imports, on the consumer items, and if it were not for the speedup of the economy because of the Vietnam situation, our machine tools industry could not compete either.

The amount of imports on many items over the last 2 or 3 years has more than tripled or quadrupled. In the automotive field there is no way of measuring the increase. Because the statistics are so jumbled up that there is no way of interpreting it.

On my trip to Germany I spoke to many factory owners who stated to me that many factories in Germany and the rest of Europe are only in existence to export to the United States, yet these European firms are protected against our exporting to their countries.

I would like to quote again from the letter from the Special Representative of Trade Negotiations:

> As far as your own problem at Nylo-Flex is concerned I think that you have stated your case fully and effectively. The basic question, as I see it, is when should the U.S. Government increase tariffs in order to assist American firms. It has been the long standing policy of both the Congress and the executive branch that tariffs should be increased only to assist an entire domestic industry and not merely one of a few firms in an industry. Otherwise tariffs would be constantly increased in order to assist individuals who may be having difficulty dealing with import competition, even though the industry as a whole is quite healthy.

Well, I have explained why my industry can't complain and even in the case where industries have complained, as an industry, reference the steel industry, no help has been given.

Mr. **Dent**. It might interest you to know that one of the greatest faults in that logic is that I can remember in the glass industry when they had 42 glass producing entities in the country. They protested tariffs. They protested the imports. They had no relief granted, so eventually, they started to drop by the wayside, and in one of the later cases, some years later, by using this determination of an industry as against an individual complaint of plant operation, they determined that the remaining plants, 11 in number—out of 42—that these remaining plants were still making a profit, and therefore, the industry was not injured, although we had lost already 31 plants which had gone out of business.

They took existing plants that were left and said that because they were healthy, inasmuch as they had made a profit, the industry itself was not injured by imports.

Mr. **Hochman**. Well, I would like to inject into my written statement, most of the people that tell me how wonderful we are here in the United States as being able to compete with the imports. I have never been able to question whether they have ever been in industry themselves.

Whether they have actually personally had to compete with this, or whether they are just looking at it from a cloud nine.

Mr. **Dent**. They are looking at it from a theoretical view. We are still teaching sophomoric economics in our colleges, we are teaching the economics of Adam Smith, and Henry George. They have long passed the scene, and the question of today's international trade is one that is completely foreign to anything that we are teaching in any of our colleges or high schools.

Mr. **Hochman**. That is right, sir. I have explained our industry and granted our present industry situation is somewhat unusual but I can assure you it is no longer a healthy industry.

Even the big corporations, who have reduced their prices within the last 4 months to at least keep their customers, are having some financial difficulty, and these companies have net worths of about anywhere from a quarter of a billion dollars to $750 million net worth, and their divisions are having problems.

Even though they own the foreign companies who are doing the dumping, they say that they must have them, because if they cut theirs off from dumping in the United States or selling in the United States, then their American competitors' foreign divisions will take their business, so they have no alternative.

So they claim it is a vicious circle.

What needs to be done to correct this situation? As I see it, is a different dumping law must be enacted, where the American businessman and customers do not have to prove to the *n*th degree that there is dumping.

As I have shown, the Canadian Government as well as other governments protect their people. Our Government is well aware of the dumping, but does nothing about it until charges are brought, while other governments bring dumping charges on their own volition, on the evidence of invoices only.

We are so busy trying to win foreign friends that we forget about our own people. Gentlemen, just think—6 weeks for Canada to bring action, against almost 2 years for the American Government to act.

I have spoken to a department official—this was yesterday—who stated that Canada is an exception, but he could not answer me about Brazil, Argentina, Mexico, Italy, Germany, and I can go on with the whole list.

Canada is a problem. In fact, I am sure you are well aware that 2 or 3 years ago the 8½ percent was rebated back to the Canadian firms, so that they could actually, as far as their cost was concerned, sell to the United States at no duty.

That is one reason that Studebaker at that time moved part of their plant to Canada.

And as soon as we do something like that, they are the first to yell, and we are the first to back off. However, just to reduce the amount of time that Customs, Treasury, and Tariffs have to make their report is not the whole answer, because I was told that if Customs and Appraisals do not have sufficient time to make a thorough investigation, and they have to make a ruling on insufficient evidence according to requirements of present laws, then in most cases they rule against the American complainant.

So we need to streamline our antidumping laws, which were enacted in 1921, and have not been changed except for some slight rewording to fit the current situation.

In fact, sir, they were made worse.

Mr. Dent. Go ahead.

Mr. Hochman. The record will show—this is Jim Hendrex, in a reprint from the American Journal of International Law, and at the time he wrote this, he was Under Secretary of the Treasury—that from 1921 through 1964, 15 percent of the cases tried were found as dumping, where assessments were levied against the companies.

Since 1955 to 1964 when the changes were, the amount of dumping findings were only 4 percent, though they do state that in 62 of the cases there was an end to the dumping.

This was stated before, but the damage—this is the point I want to stress here—the damage had been done. The industry, whatever industry it was, whether it was mine or the corset or the brassiere or anything, was damaged, and it takes years to correct this damage.

Why should foreign countries, with all the advantages of lower costs, be able to export to America for duties of only 8½ percent, while we are charged 20 to 200 percent?

And believe me, sirs, since World War II, America is not more efficient than our foreign competitors. In the automotive field because of foreign aid since the war, and their taxation and subsidies, they have newer machinery and better plants than we do.

And they are magnificent plants. So we need a complete revamping of our thinking in tariffs. This gentlemen, would stop the dumping and would alleviate a serious situation, especially in consumer goods. I believe all this is one reason our balance of payments and the outflow of gold is what it is.

Believe me when I say that, from my observations while in Europe, European labor, with very few exceptions, is as good as American labor and in some cases such as the metal working trade, more skilled.

With the vast difference in wages, how can we compete, when our wages are three to four times as high? I was under the impression that our dumping and tariff laws were to protect our standard of living, not lower it.

There are some notes here that I made in some of my meetings yesterday. The Wall Street Journal, Monday, the 1st of May, 1967, brought this whole thing out, also in the brass and the steel industries, where this dumping charge is very, very crucial.

I want to thank you for the courtesy of allowing me to testify before this hearing, and I hope my telling you of my experience in bringing dumping action will help you in passing new laws.

(The document referred to follows:)

PREPARED STATEMENT OF HOWARD S. HOCHMAN, VICE PRESIDENT, NYLO-FLEX MANUFACTURING CO., INC.

Gentlemen, thank you for inviting me.

I am a small manufacturer of tire valve hardware and tire repair materials. My industry is rather complex as far as "dumping" is concerned. The three largest manufacturers of valves in the United States are, (1) Schrader, a division of of Scovill Brass Company, who owns plants in England, France, Canada, and Mexico, and, according to authoritative sources in Europe, controls EHA of Germany; (2) Dill, a division of Eaton, Yale and Town Manufacturing Company, who owns Allegro of Germany; and (3) Bridgeport Brass Company, a division of National Distillers, who owns Bridgeport of Ireland and Zenit of Bergermo, Italy.

EHA, Ellegro, and Zenit, are the major foreign manufactuers who are dumping tire valves into the United States.

Though the foreign valves probably do not account for more than 10-15 per cent of the total valves sold in the Unted States, the effect of their pricing controls the pricing of domestic valves. This has made American prices fall from over 18¢ each in 1963 to 9¢ in 1967. All the while wage rates have gone up 30–40 per cent, and raw brass, our basic material, has gone up 33⅓ per cent. Granted, we have all gone to automation, which has lowered our labor somewhat, but this does not effect our overhead, taxes, etc. We are currently selling at a loss or just breaking even to keep our customers from buying the imports. You see, gentlemen, it doesn't make any difference if we are 10% or 100% higher than the imports, because our customers will only buy American goods if they are no more than 5% higher than the imports. Above this they won't buy.

Gentlemen, we are as efficient now, in most respects as any of our American or European competiton. If we go to more and more automation in order to compete with the foreign companies, eventually we can hope for a total reduction in price of about 3½ mills, but at a cost of reducing our employees by 25%. What does this do for the American unskilled worker, where does he go? On welfare?

The big question here, of course, is, why can't we compete with foreign imports. The Europeans are not smarter than we are, but they have many advantages. One is a rebate of 8–14 per cent on their turnover tax. Because Europeans do not voluntarily report their income for tax purposes, like Americans, the German and Italian governments have levised a tax on merchandise produced in their countries, which is equivalent to our corporation and income taxes. This tax is refunded when a foreign company exports its merchandise.

In view of this rebate, it is, therefore, really quite simple to see how the Europeans, especially Germany and Italy, can dump tubeless valves into the United States: With their subsidies, rebates, etc., by reducing their price only 5–10 per cent they can undersell us by 20%.

On May 10, 1966, I wrote a letter to the Department of Commerce asking them how I could compete with the foreign importers when they have:

(1) Much lower wages than the United States
(2) Subsidies from their government
(3) A lower freight rate to the United States
(4) 8½% duty on their products into this country.

Since, in the automotive trade, there is nothing in our favor for exporting, I can only list our *disadvantages*:

(1) Higher wages
(2) Lack of government subsidies to aid our export
(3) Higher freight rates from America to foreign countries.
(4) An impossible tariff situation

While foreign countries are enjoying an 8½% duty on their goods being shipped into the United States, below you will see what they are charging us on products we try to ship into their countries:

Argentina: Approximately 150–200 percent.
Austria: Tire valves—18% patches 28% both plus 8½% ad valorum equalization tax rate.
Brazil: 100% on both valves and patches.
England: Valves and patches—20% plus 15% temporary import charge.
Finland: Patches—13%/kilo tube valves—free tire valves— 15%/kilo.
Germany: Patches—13%duty, plus 6% turnover tax; valves—7+7% duty, plus 6% turnover tax.
Norway: Patches 20%. Did not reply on valves.
France: Patches and valves—between 18 and 22%.
Netherlands: Patches—20.1% plus 8% turnover tax; valves—10.1%, plus 5% turnover tax.
Belgium: Valves—10.1%, plus 6% turnover tax; patches—16.0% to 17.6%, plus 9% turnover tax.
Honduras: Valves and patches—$.075 per kilo plus 8% consuler duty.
Japan: Patches—15%; valves—30%.
Italy: Patches—13%; valves—16%, plus 50% administrative fee, 4% general entry fee, 8.60% equalization fee.

So you can see, though the European countries help their own companies sell in the United States, they prohibit American firms from exporting consumer products.

The fact that disturbs me, in my many trips to Washington, and from the remarks made by the Europeans, is that our country is encouraging the imports into the United States, yet has made no progress in helping exports. The Kennedy Rounds, in the two or three years they have been in existence, have not accomplished more than 5% of their goals. I have been told by State Department officials that diplomacy and relations with foreign countries are of more importance than a small industry as a whole, and, naturally, more so than one small company. My industry cannot complain as a group about dumping, since, as I explained, 75% of the American valve industry is controlled by companies whose foreign divisions are doing the dumping into the United States. It would naturally be impossible for them to bring dumping action against foreign companies who are dumping, because, though they might like to stop their competitiors' foreign divisions from dumping, any action on their part would also be stopping their own foreign divisions from dumping. The parent company is only concerned with whether the company as a whole is making a profit; they are not concerned about the division from which the profit is coming. That is the division's problem, and not the parent company's.

With the lowering of both the foreign tariffs and our own, on an equal percentage but from different bases (reference Kennedy Rounds), it is no wonder that Dill, Schrader, and Bridgeport are now importing back into the United States. In fact, when I was in Washington last Otcober, an official of the Agency for International Development, whom I had seen in order to try and find out what monies were given to my foreign competition, said he was sorry about my problem, and asked, "would you be interested in locating a plant in an underdeveloped country in order to get cheaper labor? If so, the American government would finance you." This was his answer to my problem.

A Department of Commerce spokesman wrote me that even though the German and Italians have lower wages, government subsidies, tax rebates, low freight rates, etc., that American ingenuity continues to prevail. Gentlemen, I submit it is NOT American ingenuity, in the true sense, but American big business establishing companies overseas and taking advantage of United States financing and foreign tax concessions, as well as our own low tariffs, and their dumping of exports back into the United States, that has prevailed.

We brought anti-dumping proceedings against EHA of Germany and Zenit of Italy in April of 1966. To date, our dumping action has only moved from Customs and Appraisals, Mr. Marra's division, over to Treasury. I talked to Mr.

Matthew Marks, Deputy Secretary of the Treasury and he informed me it will still be some weeks before they will be able to let me know which way Treasury has ruled. He said he would do all he could to hasten this ruling. (At this point, I must say that Mr. Mike Wallen, Mr. Marra, and his whole division has been more than cooperative in helping my company, but they state they have to follow the laws to the letter, and this is what takes so long.) However, if—and this is a big "if" with the present foreign policy of the United States—they rule in favor of Nylo-Flex, there will be a hearing in which the large foreign divisions will appeal the decision. These companies are large and can afford the exorbitant prices that the anti-dumping lawyers charge. I, as a small businessman, am unable to afford approximately $25–50 thousand for handling anti-dumping proceedings. So far, I have carried all of the anti-dumping fight for my industry, but how can any small business fight dumping when so few can afford the 50 thousand dollars for the proceedings? If the ruling is still in my favor after the appeal, then there is another 3–6 months before it goes to Tariffs. So, you see, from the beginning to the end of a dumping action, it takes approximately two years. However, most of the foreign governments protect their manufacturers. I tried a test case to Canada, and within six weeks the Canadian government wrote me saying they were going to levy a charge for the difference between my American price and my export price to Canada. This was done only on evidence of an invoice, and without anyone preferring charges. No one had to prove manufacturing costs, shipping costs, etc.

I would like to quote from a letter I received from the office of the Special Representative of Trade Negotiations:

> "By and large, I think it is clear that United States industries and United States firms, both large and small, have shown themselves able to compete effectively with imports. We have constantly had a surplus balance of trade over a number of years. The productivity and efficiency of U.S. firms have enabled them to compete against imports even though such imports are produced abroad with governmental assistance and often with lower wages."

But how can we compete when the Department of Commerce sent me statistics showing that Italy's semi-skilled labor is 50¢ an hour, while our unskilled is a minimum of $1.40, and our semi-skilled is $2.50–$3.00. Germany's skilled machinists make $1.00–$1.25 an hour; the American rate is $3.00–$4.50. In order to compete, should I move my factory to Europe, or an under-developed country, as the Agency for International Development has suggested, where the wage rate is $1.00 to $1.50 a day?

Sir, I contend we have NOT effectively competed with imports on the consumer items, and, if it were not for the speed-up of the economy because of the Viet Nam situation, our machine tools industry couldn't compete either. The amount of imports on many items over the last two or three years has more than tripled or quadrupled. In the automotive field there is no way of measuring the increase. On my trip to Germany, I spoke to many factory owners who stated to me that many factories in Germany and the rest of Europe are only in existence to export to the United States, yet these European firms are protected against our exporting to their countries.

I would like to quote again from the letter from the Special Representative of Trade Negotiations:

> "As for as your own problem at Nylo-Flex is concerned, I think that you have stated your case fully and effectively. The basic question, as I see it, is when should the United States Government increase tariffs in order to assist American firms. It has been the long-standing policy of both the Congress and the Executive Branch that tariffs should be increased only to assist an entire domestic industry and not merely one of a few firms in an industry. Otherwise, tariffs would be constantly increased in order to assist individuals who may be having difficulty dealing with import competition, even though the industry as a whole is quite healthy."

Sir, I have explained our industry, and, granted, our present industry situation is somewhat unusual, but I can assure you it is no longer a healthy industry.

What needs to be done to correct this situation:

As I see it, a different dumping law must be enacted, where the American businessman and Customs do not have to prove to the nth degree that there is dumping. As I have shown, the Canadian government, as well as most other governments, protect their people. Our government is well aware of the dumping, but does nothing about it until charges are brought, while other governments bring dumping charges on their own volition, on the evidence of invoices only. We are so busy trying to win foreign friends that we forget our own people. Gentlemen, just think—6 weeks for Canada to bring action, against almost two years for the American government to act!

However, just to reduce the amount of time that Customs, Treasury, and Tariffs, have to make their reports, is not the whole answer, because I was told that if Customs and Appraisals do not have sufficient time to make a thorough investigation, and they have to make a ruling on insufficient evidence according to requirements of present laws, then in most cases they rule against the American complainant. So we need to streamline our anti-dumping laws, which were enacted in 1921, and have not been changed except for some slight working to fit the current situation.

Also, why should foreign countries with all the advantage of lower costs, be able to export to America for duties of only 8½%, while we are charged from 20–200 per cent, and believe me, sirs, since World War II America is not more efficient than our foreign competitors. In the automotive field, because of foreign aid since the War, and their taxation and subsidies, they have newer machinery and better plants than we do. So, we need a complete revamping of our thinking in tariffs. This, gentlemen, would stop the "dumping" and would alleviate a serious situation, especially in consumer goods. I believe all this is one reason our balance of payments and the outflow of gold is what it is.

Believe me when I say that, from my observations while in Europe, European labor, with very few exceptions, is as good as American labor, and, in some cases, such as the metal working trade, more skilled. With the vast difference in wages, how can we compete, when our wages are three to four times as high. I was under the impression that our dumping and tariff laws were to protect our standard of living, not lower it.

Mr. DENT. I appreciate your very frank discussion of a very serious problem, Mr. Hochman, and as you know, I come from a town that has the Pennsylvania Rubber Co. in it.

Mr. HOCHMAN. I am very familiar.

Mr. DENT. In the old days, when I was a boy, I used to tighten down valves for summer vactions, and I know something about your valve industry.

Mr. HOCHMAN. I see.

Mr. DENT. However, the astonishing thing to me is that of the five remaining companies producing valves and valve parts and tire accessories, four of them are operating overseas, and shipping back to the United States through their subsidiaries.

Mr. HOCHMAN. That is right, and our Government is helping them with their taxes here in America.

Mr. DENT. You are the only remaining independent operator left in the United States.

Mr. HOCHMAN. Well, myself, we are talking about the rubber valves. Myself and Acme Air Appliance.

Mr. DENT. Acme Air Appliance?

Mr. HOCHMAN. Yes; this is in Hackensack, N.J.

Mr. DENT. The only two left in the entire country?

Mr. HOCHMAN. I would say, that manufactures a complete line. Now there are some companies that make a little of this and a little of that.

Mr. DENT. Where do you sell mostly? The replacement?

Mr. HOCHMAN. In the replacement.

Mr. DENT. You are not in the original manufacture?

Mr. HOCHMAN. No, sir; let's put it this way. Dill and Schrader have had the rubber companies and the automotive companies since the conception of the car.

In fact, the tubeless valve and the tubeless tire go back to 1889. The first tire was a tubeless tire, so this is how far back the valve industry goes, and this is when Schrader went into it, to make all the valves and I am the newest one in the industry.

The last one before me was in 1915. I was in 1962, in the valves, and although I have been in this industry since 1948. But this market was a fairly stable market, everybody was making a fair profit, until the imports kept dropping.

I am on both sides of the fence on this. When I chose to get started in this industry, I was buying from my competitor, in Europe, component parts to make the valves. All the time the price of the raw materials and components were going up.

All the time, his finished products were going down. So actually, there was a period there that I could buy his finished products for less than I could buy about 40 percent of the components.

Mr. DENT. Isn't that the natural evolution? You heard the marble people say where our tariff commission increased the cost or increased the tariff of the raw blocks of marble which we brought into the country and sawed into sizes and shapes, and did not increase the tariff on the finished products, so now they are shipping in the finished product, and we are losing the labor on finishing jobs.

Mr. HOCHMAN. Well it is not so much even my industry here, and myself, that I have been so disturbed about, as seeing the maze that you have to go through, and the attitude of the departments in my many trips to Washington.

Granted, some of the departments are all for you, and will assist you in many ways. But the attitude, the foreign policy, and everything, you begin to wonder whose country it is. Many times, I have forgotten myself, and said "Your country," even though I am an American, and I am glad to be here, but I am beginning to wonder whose country it really is—mine or the people overseas.

Mr. DENT. I can't answer that, as you know.

Mr. HOCHMAN. I can't either.

Mr. DENT. I do notice that a great many American concerns are getting into the category of run away industry. They are leaving the United States, and producing their products overseas, and shipping them back to the United States unmarked, unidentified. The innocent American who wants to buy American made products—there are a few that still would like to buy American made goods, have no opportunity of knowing whether the goods were manufactured in the Hong Kong area or Japan or Korea or somewhere else.

Mr. HOCHMAN. There is going to be a time when the ones that are going to stay in the United States, in order to continue—and I still am, because if I don't I might as well close my place completely—will have to buy some of their components overseas, instead of making them here. There was one argument that I had with one of the directors in the Department of Commerce, where I sent him a sample of a finished brass part that I made here in the United States, and an identical sample of one made in Germany.

The German insert, the part, was priced to me at less than the raw brass stock that I could buy from an American firm. Less than the raw material. No labor, anything to it. Forget about my labor completely. No overhead, nothing, just as I bought it from one of the brassmills, the German part actually cost me less by 3 mills than the actual raw brass.

I sent it to the brassmills and they can't figure it out to this day.

Mr. **Dent.** Yet you were told, if I remember right, in your testimony here, by the special representative of the United States, on the trade agreements, you were told that the American firms, both large and small, have shown themselves able to compete effectively with imports.

Mr. **Hochman.** That is right. I have the original right here.

Mr. **Dent.** You were told that we have a surplus of trade over the number of years and the productivity of efficiency of U.S. firms "have enabled them to compete against imports, although such imports are produced abroad with government assistance and with lower wages."

Did you, in any way, try to give them samples such as you have given us to show——

Mr. **Hochman.** Yes, I did.

Mr. **Dent.** That the differentiation of productivity has been wiped out by both the ability of the other persons to perform this production today, where he could not a year or 10 years ago, or 15 years ago, and the fact that our wage levels are up?

Mr. **Hochman.** Of course, it is pretty hard to talk to someone whose basic philosophy is so completely different than what you are trying to expound here, because their main job is to lower tariffs.

My main job is to make sure that we get a correct dumping law, and to not lower the tariffs or at least, for God's sake keep it the same. I am not even asking about raising the tariffs but at least keep them the same.

If they lower it, then I just don't know where most of the American manufacturers are going to go, because no one is going to buy our product, if they can buy it that much cheaper, a comparable product, and the European quality is as good as ours.

In fact, in some places, it might even be slightly better, for the sake of argument.

Mr. **Dent.** You note that the legislation that you are testifying on has a new departure all together from the antidumping laws and the so-called appeals to the Tariff Commission, and so on.

Mr. **Hochman.** That is right.

Mr. **Dent.** Our approach is that the eventual loser in all of this is the community.

Mr. **Hochman.** That is right.

Mr. **Dent.** So therefore, we brought the community in as a petitioner before the Secretary of Labor or to the President of the United States, or to the Congress.

In other words, we are hoping that the merchants in town who believe that they are profiting and benefiting from selling a higher markup product which is imported, and as you well know, that as soon as the American competitor is driven out of the market, the price of the foreign product goes up not only to this price that the former American price was, but in many cases on beyond that price.

Mr. **Hochman.** Well, after——

Mr. **Dent.** The merchant is the biggest loser in the whole gamut of American losses.

Mr. **Hochman.** That is right. Now after talking to this gentleman from the Agency of International Development, I was so mad when I left here and went to Europe, about 2 weeks later, I talked to some of the companies about my problem, and they came up with a solution for me that they would make automation equipment for me and for another rubber company, a large rubber company in Europe, if I was interested.

Now I was so incensed at the idea that the American Government told me to buy foreign that I disregarded an American firm, whose price was twice as high as the imported, and I bought European automation equipment, which will be in in about 2 or 3 months, and which will replace about six girls.

Now where are these girls going to go? Now all I am saying is—

Mr. **Dent.** The Job Corps, I think.

Mr. **Hochman.** Probably, this is the point that we face. If I don't buy this automation equipment, then within a year or two, I will have to lay off about 40 people. If I buy this equipment, I might be able to last out 2 years, maybe at least until the end of the dumping, to find out just what is going to happen!

And this is the problem, not only I am facing, but many small businesses. Big business does not seem to have that problem, because they can go overseas and make their profit in any part of the world they want to.

Small business cannot do that. I think Senator Sparkman is having a committee hearing, in fact, in Mobile, on this same thing, where does small business come in in export?

Our export markets have disappeared. At one time, I said to the trade negotiator of the Kennedy round, "If you are letting these imports come in at eight and a half percent, duty, and I lose my customers, why can't you try and recapture some of this volume by doing export?"

He said, "You can." I said, "I can't" because I have 20 to 200 percent duty against me. I can't export.

So we are letting them come in to ruin our markets, but they have prevented us from going after their markets, their consumer items.

Mr. **Dent.** Of course, the trap that the American industry is getting into is the promise held out that the Kennedy round is going to make markets for them overseas.

Mr. **Hochman.** It can't make markets.

Mr. **Dent.** But it will never make them as long as we have an American Fair Labor Standards Act which increases wages and cuts down the number of hours permissible per week, because no other country in the world has such restrictions.

Mr. **Hochman.** Well, if the American Government tells industry what we have to pay our labor and then cuts off our markets which increase common markets all over, including the FTA and EEC and now the South American markets, you just don't have any markets left.

Mr. **Dent.** Thank you very kindly, Mr. Hochman.

Mr. **Hochman.** My pleasure, sir.

Mr. **Dent.** Incidentally, today I will be making a presentation on the floor of the House on glass—American-made glass. That industry has been a long suffering industry.

Yours is a new one.

Mr. **Hochman.** I referred to the glass and to the ceramic industry in my letter to the trade negotiator.

Mr. **Dent.** I noticed.

Mr. HOCHMAN. A couple of times and I did not get a reply from them.

Mr. DENT. The next hearing will be tomorrow morning, when we will have the representatives of the watch and footwear industries.

The meeting will stand adjourned, until 10 o'clock tomorrow morning.

Thank you, Mr. Hochman.

Mr. HOCHMAN. Thank you, sir.

(Whereupon, at 12:20 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, May 3, 1967.)

H.R. 4765

To amend the Tariff Schedules of the United States to impose a duty on tubeless tire valves.

Statement of John E. Halloran, President, Michigan Knife Co. and Machine Knife Association

SUMMARY OF PRINCIPAL POINTS

1. The Machine Knife Association strongly urges the Congress to approve H.R. 4765, which would permanently suspend the collection of duties on chipper knife steel. Congress has previously passed two temporary reductions of the rate of duty on chipper knife steel. The time has come for a permanent solution.

2. American chipper knife manufacturers, including members of the Machine Knife Association, must rely on foreign imports of chipper knife steel as their source of raw material. The domestic availability of this peculiar analysis of alloy tool steel, which historically has been grossly insufficent to meet the demands of American knife manufacturers, has now evaporated completely.

3. Just last year the U.S. International Trade Commission found that the domestic supply of chipper knife steel was totally inadequate, and therefore recommended the exemption of chipper knife steel from import quotas on specialty steel products. The Commission also found that domestic specialty steel manufacturers had demonstrated little, if any, interest in serving this narrow product market. The President accepted the ITC's recommendation, and exempted chipper knife steel from the quotas he otherwise imposed on alloy tool steel imports last July.

4. The temporary reduction of duties on chipper knife steel, which Congress most recently enacted in 1982 (in Public Law No. 97-446), expires on March 31, 1985. This temporary reduction in duties has enabled American chipper knife manufacturers to reduce their raw material costs and become more competitive with foreign chipper knife imports.

5. Until the first temporary reduction in duties on chipper knife steel was enacted in 1980, the entire American chipper knife industry was in danger of extinction. Prior to 1980, more than a dozen American companies had ceased or substantially curtailed their manufacture of chipper knives, in large part because they were caught in a squeeze between the lack of a consistent and reliable domestic supply of raw material and a duty structure that favored the importation of foreign-made chipper knives over the importation of chipper knife steel as a raw material. As a result, many American companies that had formerly manufactured chipper knives in the United States became distributors of foreign-made knives.

6. If the temporary reduction of duties on chipper knife steel is not extended, and those duties rise to their former level, the deterioration of the American chipper knife industry will resume. Increased duties on chipper knife steel would not result in increased purchases of domestic steel, but instead would result in an increase in imports of foreign-made chipper knives.

7. Another short-term temporary duty reduction is not sufficient. American chipper knife manufacturers need permanent relief so that they can make long-term production, investment and supply decisions. The history of the two previously enacted temporary duty reductions clearly demonstrates that permanent elimination of the duty on chipper knife steel is not only warranted, but necessary for the future growth and health of the American chipper knife industry.

On behalf of the members of the Machine Knife Association and their American workers, I strongly urge Congress to enact H.R. 4765 and thus grant permanent duty relief to the American chipper knife industry.

STATEMENT

I. Introduction

My name is John E. Halloran. I am the president of Michigan Knife Co. of Big Rapids, Michigan, and Springfield, Oregon. Michigan Knife Co. employs approximately 170 workers, to whom it pays wages and salaries which exceed $2.6 million annually. Chipper knives and related products account for more than 80 percent of Michigan Knife Co.'s business. If the existing reduction of duties on chipper knife steel—our principal raw material—is not extended, those sales, and the jobs they create, will be in serious jeopardy.

The Machine Knife Association, of which I am president, was created in 1882 and represents companies from around the country that are engaged in the manufacture and sale of machine knives and related products to the wood industry. Our members have manufacturing and distribution facilities in many states, including Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, and Washington. A list of members of our association and the locations of their facilities is attached to my statement.

I have been personally engaged in the wood knife industry for almost twenty years, the last ten of which have been as president of Michigan Knife Company. Both as president of the Machine Knife Association and as president of one of the largest American manufacturers of chipper knives, I am convinced that a permanent suspension of the duty on chipper knife steel, as provided for by H.R. 4765, is necessary to enable the American chipper knife industry to grow and prosper in the face of the intense competition that our industry faces from imports of foreign-made knives.

II. The Chipper Knife Industry

Chipper knife steel is designed solely for the manufacture of industrial knives that are used by paper manufacturers, lumber mills, and other forest products companies to chip timber and wood into pulp, chips, and other wood fiber products.[1] Wood chips are used to manufacture paper and corrugated boxes, to treat sewage, in landscaping, and for an increasing variety of other purposes. Wood chips are also being used increasingly as an energy source for industrial power plants.

There are now four major American chipper knife manufacturers in the United States, including Hannaco Knives & Saws, Inc., Michigan Knife Co., R. Hoe & Co., Inc., and Simonds Cutting Tools. These firms employ hundreds of workers in the production of chipper knives. Many more people are employed in administrative and sales positions with these firms.

Michigan Knife Co., like other American chipper knife manufacturers, supplies hundreds of customers in the paper, forest products, and lumber mill supply industries. Our customers include such major forest products companies as Boise Cascade, Champion Building Products, Georgia-Pacific, International Paper, Louisiana-Pacific, St. Regis, Union Camp and Weyerhauser. Chipper knives are also consumed by public agencies, including small towns and villages, that use small wood chipping machines for tree-limb removal and disposal.

American chipper knife manufacturers face fierce competition from imports of foreign-made chipper knives. Because of this fierce competition, American chipper knife manufacturers cannot survive, even in their home markets, unless they keep their production and raw material costs as low as possible.

Until 1980, when the first reduction in chipper knife steel duties was enacted, American chipper knife manufacturers were seriously disadvantaged by a major difference in the rate of duty on imported chipper knife steel as compared to the rate of duty on foreign-made chipper knives. Before the first temporary duty legislation passed, the rate of duty on chipper knife steel was more than 12 percent whereas the rate of duty on foreign-made knives was less than 5 percent.

Given that chipper knife steel represents the major cost (from 70 to 80 percent) in the manufacture of chipper knives, this difference in duty—of more than 250 percent—gave foreign knife manufacturers a competitive advantage that almost put them beyond reach.

As a result of this disparity in duties, more than a dozen American knife manufacturers left the chipper knife market, moved their production facilities overseas, were acquired by foreign concerns, or became distributors of foreign-made knives.

In 1980, Congress and the President helped alleviate this unfair discrimination against American chipper knife manufacturers by temporarily reducing the rate of duty on chipper knife steel to 4.6 percent, which was then the rate of duty on imported foreign-made knives.[2] Similar legislation was enacted in 1982, which reduced the rate of duty on chipper knife steel, in stages that were approximately equal to the rate of duty on foreign-made chipper knives, until March 31, 1985.[3] The current temporary rate of duty on chipper knife steel is 4.0 percent ad valorem.

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[1] Chipper knife steel is classified under Item 606.93 of the Tariff Schedules of the United States (TSUS). The chemical description of chipper knife steel, which appears in Headnote 2 (viii) of Schedule 6, Part 2, Subpart B of the TSUS, was developed by commodity specialists at the ITC after imports of chipper knife steel were exempted from the then-existing quotas on specialty steel in 1978.

[2] Pub. L. No. 96-609 (H.R. 5047), § 113, 94 STAT. 3557 (Dec. 28, 1980).

III. The ITC's Investigation of Chipper Knife Steel in 1983

Shortly after the most recent temporary reduction in chipper knife steel duties was enacted, the U.S. International Trade Commission commenced an investigation of all imports of specialty steel, including tool steel, under Section 201 of the Trade Act of 1974.[4] In the course of its investigation last spring, the ITC received a substantial amount of testimony and other evidence regarding the lack of a domestic supply of chipper knife steel for American knife manufacturers.

After two sets of hearings and the accumulation of extensive evidence, the ITC determined that, although import quotas or increased duties ought be imposed on other grades of specialty steel, chipper knife steel should be exempted from such restrictions, because, in the unanimous opinion of the ITC, there is an insufficient domestic supply of chipper knife steel and a lack of interest, on the part of domestic steel companies, in supplying chipper knife steel to American knife producers.[5]

For examples, in his recommendation to the the President, ITC Chairman Alfred Eckes stated that, for chipper knife steel and two other narrowly defined grades of tool steel:

> * * * there is either no domestic production or insufficient domestic production to meet the demands of consumers. Most importantly, the domestic industry has exhibited little, if any, interest in serving these market niches.[6]

Similarly, Commissioners Paula Stern and Veronica Haggart reported to the President that chipper knife steel * * * can apparently not be supplied in sufficient quantities at a price which is not well in excess of the market price for imports in the U.S. market. Testimony and submissions in the present and former specialty steel investigations indicate that chipper knife steel's unusual chemistry and varied product form make it undesirable for U.S. producers to enter the market. Further testimony cited repeated and unsuccessful efforts by the consumers of this product to attempt to develop domestic sources for the material.[7]

Based upon these unanimous recommendations by the ITC, President Reagan, in imposing quotas upon imports of other grades of tool steel, specifically exempted chipper knife steel from such quotas on the ground chipper knife steel is either not produced in the United States or is produced in such small quantities that an exemption would not have an adverse impact on the domestic industry.[8]

These unanimous conclusions of the ITC and the President, after thorough investigation and numerous opportunities to receive contrary evidence from the domestic specialty steel industry, dramatically confirm what American chipper knife manufacturers have known and have been saying for many years: they cannot rely upon a domestic supply of chipper knife steel and will not survive unless they can obtain their raw material from overseas at the lowest possible price.

IV. There Is No Longer Any Domestic Supply of Chipper Knife Steel

It appears that there is no longer any domestic supply of chipper knife steel. Although the domestic supply of chipper knife steel has not, for many years, been adequate, reliable or consistent, such domestic production as formerly existed has apparently evaporated entirely. A survey of the four significant American chipper knife manufacturers indicates that not one of them has purchased or ordered chipper knife steel from a domestic source since 1982, other than a few sporadic purchases of small quantities of chipper knife steel that domestic suppliers were liquidating from their inventories.

Not one of these American chipper knife manufacturers has even been approached, within the past two years, by a domestic steel company seeking to sell any substantial quantity of chipper knife steel.

A dramatic demonstration of the lack of interest in chipper knife steel on the part of domestic steel suppliers is that during the course of the ITC's investigation last spring, right in front of the ITC commissioners, the American chipper knife manufacterers presented their specifications for chipper knife steel to the domestic tool steel suppliers and their representatives. Not one company has ever responded to those specifications.[9]

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[3] Pub. L. No. 97-446 (H.R. 4566), § 142, 96 STAT. 2342 (Jan. 12, 1983).

[4] In the Matter of Stainless Steel and Alloy Tool Steel, Inves. No. TA-201-48 (U.S.I.T.C., 1983).

[5] Stainless Steel and Alloy Tool Steel, Report to the President on Investigation No. TA-201-48, USITC Pub. 1377 (May 1983)(hereinafter referred to as the "ITC Report").

[6] ITC Report at 55.

[7] ITC Report at 48.

[8] Presidential Proclamation 5074, 48 Fed. Reg. 3323 (July 21, 1983). In 1978 President Carter had exempted chipper knife steel from a previous set of quotas on imports of specialty steel Presidential Proclamation 4559, 43 Fed. Reg. 14433 (April 6, 1978).

Previously, in May 1982, Michigan Knife Co. had sent inquiries to eight domestic specialty steel producers, including every domestic company known to have produced chipper knife steel at any time within the previous ten years. Only two firms responded at all, and neither one of them was able or willing to offer prices or terms there were competitive with foreign sources of chipper knife steel.[10]

In sum, we are not aware of any current or planned production of chipper knife steel by any domestic tool steel producer, and not one domestic tool steel supplier has sought to sell chipper knife steel to the American chipper knife industry within the past two years.

V. The American Chipper Knife Industry May Disappear If Duty Relief Is Not Made Permanent.

The previous temporary legislation to reduce duties on chipper knife steel has helped arrest the decline of the American chipper knife industry, but permanent relief is necessary for American knife manufacturers to ensure their ultimate survival.

At the hearings before the ITC last spring, and in sworn affidavits that were submitted to the Commission as part of its investigation, each American chipper knife manufacturer indicated that, if it could not obtain chipper knife steel from abroad, it would almost certainly be forced to cease the manufacturer of chipper knives in this country.[11] The choice is not between domestic and foreign chipper knife steel. It is between having an American chipper knife industry or relying solely upon imports of foreign-made knives.

Although we are grateful to the Congress and to the President for the temporary relief we have already been granted, the expense and uncertainty associated with a series of temporary duty reduction bills is so substantial that they prevent American knife manufacturers from making long term plans for investment, production capacity, and marketing.

Temporary duty legislation as to chipper knife steel has either been under consideration or in effect for more than five years.[12] During that time, the Congress and the Executive Branch have found (as did the ITC last spring) that there is not an adequate domestic supply of chipper knife steel. At present it appears that there is not any domestic supply of this raw material nor any prospect that one will materialize in the foreseeable future.

Under these circumstances, the collection of duties on chipper knife steel should be permanently suspended. A continuation of temporary relief would be unfair to American knife manufacturers since they have, at considerable expense, proven time and again, over a period of years, that they cannot survive in the absence of duty relief. Similarly, the imposition of any duty on chipper knife steel would be unfair and counter-productive, since it would not benefit any domestic industry but would instead impose an unnecessary cost upon American chipper knife manufacturers in their struggle to compete against imports of foreign made knives.

VI. Conclusion

The history that has accumulated during the previous two temporary duty reductions and the findings of the U.S. International Trade Commission during its investigation of chipper knife steel imports last spring are a compelling basis upon which

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[9] See Stainless Steel and Alloy Tool Steel, Post-Hearing Brief On Behalf of the Machine Knife Association and Michigan Knife Company, ITC Inves. No. TA-201-48 (Remedy Phase) (April 11, 1983) at 3-4 and Exhibit A.

[10] See Stainless Steel and Alloy Tool Steel, Pre-Hearing Brief On Behalf of the Machine Knife Association and Michigan Knife Company, ITC Invest. No. TA-201-48 (Injury Phase) (Feb. 2, 1983) at 18-19 and Exhibit H.

[11] See Stainless Steel and Alloy Tool Steel, Pre-Hearing Brief On Behalf of the Machine Knife Association and Michigan Knife Company, ITC Invest. No. TA-201-48 (Injury Phase) (Feb. 2, 1983) at 14-23 and the affidavits contained in Exhibit G, as well as the transcript of the testimony given before the ITC on February 9, 1983, by representatives of three of the largest American chipper knife manufacturers at TR. 262-63.

[12] The first bill to suspend duties on chipper knife steel was introduced in the 95th Congress on June 12, 1978 (H.R. 13094). Since that time there have been four sets of hearings on chipper knife steel legislation. In the 96th Congress, hearings were held before the House Trade Subcommittee on July 27, 1979, and before the Senate International Trade Subcommittee on February 5, 1980. In the 97th Congress, hearings were held before the House Trade Subcommittee on June 15, 1981, and before the Senate International Trade Subcommittee on July 21, 1982.

Congress can and should permanently suspend the collection of duties on chipper knife steel.

For the reasons described above, the Machine Knife Association and its members, including Michigan Knife Co., strongly urge the Congress to enact H.R. 4765.

CHIPPER KNIFE MANUFACTURERS AND MEMBERS OF THE MACHINE KNIFE ASSOCIATION WHO SUPPORT H.R. 4765

Bolton-Emerson, Inc., Lawrence, Massachusetts; Philadelphia, Pennsylvania; Seattle, Washington.

Detroit Edge Tool Company, Detroit, Michigan.

Hannaco Knives & Saws, Inc., Monroe, Louisiana; Greenville, Mississippi; Eugene, Oregon; Florence, South Carolina.

Lancaster Knives, Inc., Lancaster, New York; Portland, Oregon.

Michigan Knife Company, Big Rapids, Michigan; Springfield, Oregon.

The Ohio Knife Company, Cincinnati, Ohio; Portland, Oregon.

R. Hoe & Co., Inc., Birmingham, Alabama; Scarsdale, New York; Portland, Oregon.

Simonds Cutting Tools, Chicago, Illinois; Shrevesport, Louisiana; Fitchburg, Massachusetts.

U.S. Knife Co., Division/Bohler Bros. of America, Houston, Texas.

The Wapakoneta Machine Company, Wapakoneta, Ohio.

COLLIER, SHANNON, RILL & SCOTT,
Washington, DC, March 27, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Specialty Steel Industry of the United States vigorously opposed H.R. 4765, which would eliminate the duties currently imposed on imported chipper knife steel.

U.S. producers of chipper knife steel have been devastated by imported chipper knife steel which is either heavily subsidized or dumped. In fact, the Department of Commerce has already determined that imports of tool steel, including chipper knife, from the Federal Republic of Germany (which accounts for almost half of total imports) are being dumped at prices ranging up to 18.41 percent less than fair value.

As a result of these unfair trade practices, more than 90 percent of the domestic market is now dominated by imports. Ten years ago, United States producers supplied approximately 80 percent of the domestic consumption of chipper knife steel.

In addition, the Multilateral Trade Negotiations agreements, bargained for in good faith by our government, and approved by Congress, will reduce the duty rate on imported chipper knife steel to 6 percent in 1967. The U.S. specialty steel industry wants only to maintain the tariff agreements already negotiated by the U.S. government.

The specialty steel industry of the United States opposes this blatant attempt to destroy domestic production of this product. Passage of H.R. 4765 and the subsequent additional reductions in the duty on imported chipper knife steel would do precisely that.

Very truly yours,

DAVID A. HARTQUIST,
Counsel, Specialty Steel Industry of the United States.

H.R. 4790

To suspend for 3 years the duty on crude 8+5 hydroxyquinolines.

CALGON CORP.,
Pittsburgh, PA, March 28, 1984.

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means, Longworth Office Building, Washington, DC.

DEAR MR. SALMON: I, Joseph A. Fischette, Senior Attorney for Merck & Co., Inc. of Rahway, New Jersey, hereby submit the following comments on behalf of Calgon Corporation of Pittsburgh, Pennsylvania, a wholly-owned subsidiary of Merck & Co., Inc. concerning H.R. 4790.

It is the position of both Merck & Co., Inc. and Calgon Corporation, its subsidiary, that H.R. 4790 introduced by Representative Clinger will have an adverse impact upon both Merck & Co., Inc. and Calgon Corporation. Merck & Co., Inc., through its subsidiary Calgon Corporation, is a domestic manufacturer of crude 8+5 hydroxyquinolines; and thus, would be severely impacted by the elimination of import duties on foreign crude 8+5 hydroxyquinolines.

Due to the time constraints in filing comments on H.R. 4790, both Merck & Co., Inc. and Calgon Corporation hereby reserves the right to file additional comments and to appear at any hearing by the Committee on Ways and Means concerning H.R. 4790.

I may be reached at 412/777-8183. My address is Calgon Corporation, P.O. Box 1346, Pittsburgh, Pennsylvania 15230. Mr. Theodore Zierden, Calgon's Business Director of the Specialty Chemicals Group may be reached at 412/777-8783. Mr. Zierden's address is Calgon Corporation, P.O. Box 1346, Pittsburgh, Pennsylvania 15230. Both Mr. Zierden and myself will be available to answer any questions you may have concerning any issues raised in this letter.

Thank you for your cooperation in this matter.

Very truly yours,

JOSEPH A. FISCHETTE, *Senior Attorney.*

RUETGERS-NEASE, CHEMICAL CO., INC.,
State College, PA, March 19, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: This letter is in response to the request of the Honorable Sam M. Gibbons, Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives for written comments on the miscellaneous trade and tariff bills, as presented in the press release of March 12, 1984.

(1) I am writing in support of H.R. 4790 (submitted by Mr. Clinger): to suspend for three years the duty on crude 8+5 hydroxyquinolines. My name, title, and affiliation are: Robert D. Shepherd, Manager, Marketing Research and Development, Ruetgers-Nease Chemical Company, Inc., 201 Struble Road, State College, PA 16801, Phone: 814-238-2424 (Ext. 63).

(2) This statement is submitted in behalf of my employer, Ruetgers-Nease Chemical Company, Inc.

(3) Ruetgers-Nease Chemical Company is requesting a three-year suspension of duty on a crude mixture of 8+5 hydroxyquinoline, the principal raw material which we use to produce a new chemical called quinolinic acid. The State College, PA plant of Ruetgers-Nease is the only U.S. producer of this chemical, which is used by other chemical companies to manufacture two important new chemicals. However, we face serious competition from low-priced imports, and the requested duty suspension on a raw material represents the difference between continued, growing production and complete loss of this new business.

BACKGROUND

Ruetgers-Nease is a small company with company headquarters, Research and Development and principal production facilities in State College, PA. We also have small plants in the Cincinnati, OH area and in Augusta, GA.

Research on a new chemical product, known as quinolinic acid, was begun in 1980. Late in 1981 we were able to elicit serious interest from potential customers, and a year later began small scale production. Early last year we began full scale production here at our State College plant.

This chemical is now being used by our customers to make a unique pigment, and a pesticide—both new products.

The principal raw material which we use in our process is a relatively inexpensive crude grade of 8-hydroxyquinoline, which contains substantial amounts of the 5-isomer, as well as the 6- and others. Ruetgers-Nease contacted the U.S. producers of 8-hydroxyquinoline and attempted to obtain this product from them, but they were unable to provide it for us. In all probability, it was simply uneconomic for them to produce a moderate quantity of a crude mixture and sell it to us for less than half the 8-hydroxyquinoline price.

At length, we were able to locate a source of this material in Europe, available to us at a cost which apparently made the quinolinic acid project economically viable (about $3 per pound, plus freight and duty). We were paying a duty of 13.6 percent ad valorem plus 1.7 cents per pound under TSUSA No. 407.16. During the latter part of 1983, we were informed by the Customs Service that this material had been reclassified, to TSUSA No. 506.4000, and that we would be retroactively charged a duty of 16.2 percent ad valorem, plus 1.7 cents per pound.

There are no other U.S. producers of quinolinic acid, and we are unaware of any plans by other chemical firms to enter that marketplace. However, even as we perfected our process and product during 1983, low-cost foreign competition developed, one located in the Netherlands, the other in Japan. Using different processes, and operating under different economic conditions, they are able to offer our customers quinolinic acid at very competitive pricing. Furthermore, they pay a duty of only 13.5 percent ad valorem, under TSUSA No. 406.42.

It would be of very great importance to Ruetgers-Nease to have the duty on crude 8+5 hydroxyquinoline suspended for three years, as in all probability such relief represents the difference between continuation of a successful new venture and the total loss of this business, in under one year, to imports. We believe it would also benefit our customers to have a strong, competitively priced U.S. supplier of quinolinic acid; but if we fail to obtain this tariff relief, the price differential would be too high for our customers to absorb.

If we are granted this tariff relief, our imports of the crude 8+5 hydroxyquinoline are expected to be roughly 1.5 million pounds over the three-year period; if not, our imports of this material will probably be zero.

If I may be of any further assistance in explaining our situation, please do not hesitate to contact me.

Sincerely,

Robert D. Shepherd,
Manager, Marketing Research and Development.

H.R. 4825

To provide for a temporary reduction in duty on imported fresh, chilled, or frozen Brussels sprouts.

No comments received on this bill.

H.R. 4887

To permit until Jan. 1, 1987, the duty-free entry of magnetron tubes used in microwave cooking appliances.

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS,
Chicago, IL, March 30, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: The Association of Home Appliance Manufacturers (AHAM), representing the major manufacturers of microwave ovens (see attachment), supports H.R. 4887, sponsored by Congressman Guy Vander Jagt.

H.R. 4887 would suspend the existing 2% duty rate on imported magnetron power tubes (TSUS Item 684.28), a vital component of microwave cooking appliances, for a period of three years. Although these components were manufactured in the United States at one time, there are presently no domestic producers of the product. To the best of AHAM's knowledge, all domestic manufacturers of microwave ovens purchase magnetron power tubes from foreign sources.

We estimate that our industry imported approximately 4 million magnetron tubes in 1983, representing a value of approximately $65 million annually. The duty rate for this component is already scheduled to be phased out by January 1, 1987, as a result of the last round of multilateral trade negotiations. H.R. 4887 merely advances the date upon which the duty will be eliminated.

The appliance industry is among the most competitive in the country. The market for microwave ovens has been growing at a dramatic pace. Elimination of the tariff on imported magnetron tubes will remove an unnecessary cost and permit manufacturers to be even more competitive in the future. Removal of the tariff will also benefit American consumers, who ultimately pay for the tariff.

AHAM would not oppose minor modifications to the bill, as long as it remains clear that the duty suspension applies to microwave oven magnetron power tubes.

We urge the Committee on Ways and Means to act favorably on H.R. 4887.

Sincerely yours,

M. KENT ANDERSON,
Vice President, Government Relations.

MANUFACTURERS OF MICROWAVE OVENS

O'Keefe & Merritt; Tappan Company; General Electric; Magic Chef; Admiral, Division of Magic Chef; Panasonic Company; Quasar Company; Maytag Company; Hardwick Stove; Jenn-Air Corporation; Riccar America Company; Roper Corporation.

Sanyo Electric; Toshiba America; Whirlpool Corporation; Frigidaire Company; Gibson Appliance; Kelvinator Appliances; White-Westinghouse Appliance.

STATEMENT OF THE MAYTAG CO.

The Maytag Company of Newton, Iowa, is a major manufacturer of household appliances which are distributed nationwide. Products manufactured by Maytag include clothes washers, clothes dryers, dishwasher, and food waste disposers. Maytag's Hardwick Stove Division located in Cleveland, Tennessee, manufactures and distributes microwave ovens as well as gas and electric ranges and gas grills. H.R. 4887 directly affects operating costs associated with the production of microwave ovens.

The Maytag Company strongly supports H.R. 4887, introduced by Representative Vander Jagt, which permits, until January 1, 1987, the duty-free entry of magnetron tubes used in microwave cooking appliances.

This legislation is necessary because of the fact that Japanese manufacturers have taken over the U.S. market for production of this essential component product. According to the Association of Home Appliance Manufacturers, there is today no domestic manufacturer of this type of magnetron tubes.* Hardwick and other domestic manufacturers of microwave ovens must purchase magnetron power tubes from foreign sources as component parts which they use in the production of microwave ovens.

The U.S. appliance industry is among the most competitive industries in the country. Within this industry, the market for microwave cooking appliances has been growing at a dramatic pace. As indication of a degree of competition which currently exists, Underwriters Laboratory (U.L.) lists 46 companies which manufacture or market microwave cooking appliances for household or commercial use. These products, of course, are manufactured both domestically and overseas. It is clear that in order for domestic manufacturers to remain competitive in a highly competitive international market, they must have the ability to produce at the lowest possible cost consistent with quality standards.

H.R. 4887 would suspend the existing rate of duty on imported magnetron tubes. The U.S. appliance industry estimates that about 2.8 million magnetron tubes were imported into the United States in 1982. The total value of these imports amounted to $45 million in 1982. Therefore, removal of the duty on magnetron tubes would result in a savings to domestic manufacturers of nearly $1 million annually. It is important to note that during the last round of Multilateral Trade Negotiations it was agreed that the rate of duty applicable to component parts of cooking appliances would be phased out by January 1, 1987. This legislation merely advances the date upon which the duty applicable to magnetron tubes will be eliminated in recognition of the fact that there is no longer any domestic manufacturers of this highly specialized product.

The Maytag Company believes that there can be no rationale for imposing a tariff when no domestic production exists. Adoption of H.R. 4887 will permit domestic appliance firms to purchase this essential component at a lower cost, thereby enabling them to be more competitive. Most importantly, removal of this tariff burden will be beneficial to American consumers who ultimately pay for such tariff in the form of higher prices.

Maytag, therefore, respectively urges the Subcommittee to act favorably and expeditiously on H.R. 4887.

STATEMENT OF MAGIC CHEF, INC.

Magic Chef is one of the largest producers of a full line of household appliances and heating equipment which are sold nationally. Included in the product line are microwave ovens. We are forced to buy the magnetron tubes for these ovens from foreign sources, principally Japan, because there are no products of this type manufactured in the United States.

H.R. 4887 was introduced by Representative Guy Vander Jagt. Although no definitive figures are available on the import of these tubes, the appliance industry estimates that about 2.8 million units were imported into the United States in 1982 at a total value of approximately $45 million. Sales of this product are rising sharply, and by the end of 1984 they will be approximately double those figures.

The duty at present is 1½% and it will be phased out under the Multilateral Trade Negotiations by January 1, 1987. It seems an undue burden to continue the duty until that date. A collateral topic is that the Japanese are taking a very substantial part of our microwave oven business away from us on the basis of low costs and this additional duty imposes a further burden.

Magic Chef respectfully requests the Subcommittee to act with all speed in passing H.R. 4887.

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* The Maytag Company does not oppose refining H.R. 4887 for the purpose of insuring that magnetron tubes used in applications other than microwave appliances are not covered.

H.R. 4891

To provide duty-free treatment to certain cresylic acid.

Sherwin-Williams Co.,
Cincinnati, OH, March 29, 1984.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: This statement is in response to the Subcommittee on Trade's request for written testimony regarding certain miscellaneous tariff and trade bills. Of special concern is H.R. 4891 which would provide for duty-free treatment to cresylic acid. Section 1 of this bill would create a new tariff schedule 401.25 which would create duty-free status for phenol, cresols and xylenols with impurities of 1% or less. We strongly oppose the enactment of this legislation.

In particular, we oppose the proposal to grant duty-free status to cresols of 99% purity or less. Enactment of this proposal would essentially nullify existing tariff schedule 402.28 which sets forth duties for cresols with a purity of 75% or more. The net result would be to provide duty-free treatment to all cresols (meta-, para-, ortho-, or their mixtures). This would open the door even wider for further erosion of the business of an American supplier and the continued loss of employment for American workers.

The Sherwin-Williams Company is a manufacturer of mixed and para cresols. Since 1981 the price on para cresols has been continually dropping from a one-time high of $1.46 per pound freight on board (F.O.B.) Chicago to the 1983 list price for para cresol of $1.15 per pound F.O.B. Chicago. Since 1981 the employment by the Sherwin-Williams Company has decreased about 40% in the cresol manufacturing area. Further intrusion into the U.S. market of low cost cresols could in fact cause the closing of the Sherwin-Williams facility.

We strongly oppose the enactment of H.R. 4891 and will be pleased to send you additional information further detailing the adverse impacts which the enactment of this legislation would have upon the Sherwin-Williams Company. If you have any questions, please feel free to contact me directly or our designated representative, Randolph J. Stayin, Taft, Stettinius and Hollister, 21 Dupont Circle, N.W., Suite 600, Washington, DC 20036, (202) 223-6851.

Sincerely,

Kenneth H. Wilkinson,
Director, Industry and Government Affairs.

H.R. 4899

To suspend the duty on acetylsulfaguanidine until the close of Dec. 3, 1986.

See comments of Hon. Cooper Evans at p. 269, and Salsbury Laboratories, Inc., at p. 269.

H.R. 4901

A bill, superseding H.R. 3299, to amend the Controlled Substances Act, the Controlled Substances Import and Export Act, and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes.

No comments received on this bill.

H.R. 5010

A bill relating to the tariff treatment of zinc-bearing ores, zinc dross and skimmings, zinc waste and scrap, unwrought zinc, and certain zinc-bearing materials.

See also comments of Lead-Zinc Producers Committee at p. 273, and National Association of Recycling Industries, Inc., at p. 278.

HECLA MINING CO.,
Wallace, ID, April 30, 1984.

Hon. SAM M. GIBBONS,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I write this short letter in support of H.R. 5010, a bill introduced by Congressman Don Pease. This is in response to your Subcommittee on Trade Notice No. 29 regarding certain tariff and trade bills, and I have separately sent six copies to John Salmon.

My company, Hecla Mining Company, fully supports passage of this legislation, as we believe a suspension of the tariff on slab zinc will help to keep zinc mines in the Pacific Northwest competitive on the domestic and world scene. There is no zinc smelter in the United States close enough to mining properties in the Northwest capable of processing our concentrate production and able to make transportation arrangements for smelting on a profitable basis. Our only practicable outlet for zinc concentrates is the Cominco smelter at Trail, British Columbia, Canada. Any duty imposed on slab zinc imports hurts mines shipping to Canada because the United States is the normal market for the slab zinc produced from our concentrates and slab zinc duties are passed back to the mines in one form or another.

We have no objections to other provisions in H.R. 5010, which make permanent long-standing duty suspensions on zinc-bearing ores and concentrates. This should accommodate the existing zinc smelters in the United States. The zinc smelting industry should not oppose the suspension of the 1.7 percent duty on imported slab zinc, as the industry is simply not in a position to meet domestic demand. We believe H.R. 5010 will actually increase domestic employment by restoring the viability of our mines and perhaps others.

Sincerely,

WM. A. GRIFFITH, *President.*

STATEMENT OF R.M. COOPERMAN, EXECUTIVE DIRECTOR, INDEPENDENT ZINC ALLOYERS ASSOCIATION, INC.

The Independent Zinc Alloyers Association, Inc. (IZAA), 900 Seventeenth Street, N.W., Washington, D.C., represents approximtely 65 percent of the production capacity of zinc alloy sold in the United States to the castings and forgings industries. Companies, virtually all small businesses, are located in twelve states.

In the interests of equitable treatment of zinc imports for the metal producing segments of the industry, we support H.R. 5010 and oppose H.R. 4443.

It is constructive to permit zinc ores, dross and skimmings, waste and scrap and unwrought slab zinc to come into this country without duty. There have been nine years of suspension of the diminimus duty on ores. Our continued reliance on foreign ores and concentrates dictates that this duty should be permanently suspended.

The duty on unwrought slab zinc has never been suspended. In recognition of our reliance on foreign slab zinc, this duty should have a three year trial suspension.

Within the recent past the U.S. has been a net exporter of zinc ores and concentrates. Some of this exported material is for tolling and uses foreign smelting operations including labor. Nevertheless, ores and concentrates should come into this country duty free. It is an essential raw material for a segment of the zinc producing industry; just as slab zinc is an essential raw material for a segment of the zinc producing industry and both should be allowed to enter the U.S. duty free.

Independent alloyers conduct trade in a worldwide market as a matter of everyday business and find no reason for a further extension of the duty on ores. It should be ended.

It gives no advantage to the U.S. or to our trading partners and is only 4.4 tenths of a cent per pound. Hardly an effective trade instrument. The minor technical opportunity it might offer in a trade action under our laws is inconsequential because our great reliance on foreign ores and concentrates virtually precludes any trade action against imports.

According to a study by the Congressional Budget Office for the Congress published in August, 1983, the United States was 67 percent reliant upon imports of all forms of zinc in 1981. This percentage will not be substantially different for the years 1982-1984.

Following is a table of domestic production and import reliance on zinc ores and concentrates and slab zinc in 1981:

	Metric tons
U.S. mine production of recoverable zinc	[1] 312,418
U.S. production of slab zinc	[1] 392,984
Imports of ores and concentrates (from which zinc is recovered)	[2] 106,809
Exports of ores and concentrates	[1] 49,199
Imports of slab zinc	[1] 602,694

[1] Mineral Industries Survey, December, 1982, Table 1, U.S. Department of the Interior, Bureau of Mines.

[2] Annual Review, U.S. Zinc and Calcium Industries, Zinc Institute, Inc., 292 Madison Avenue, New York, NY. Comparable data is not published by the Bureau of Mines.

Slab zinc is the first stage of refined zinc metal and is produced in several grades, chiefly special high grade, high grade, continuous galvanizing grade, controlled lead grade, and prime western grade.

The 4.4 tenths of a cent per pound duty on imports of zinc ores and concentrates is scheduled under the last round of Multinational Trade Negotiations (MTN) to decline to 3 tenths of a cent per pound in 1987.

There is a duty of 1.7 percent ad valorem on imports of slab zinc, but is is scheduled under the MTN to decline only to 1.5 percent ad valorem by 1987.

The table above demonstrates that U.S. reliance on imported ores and concentrates and slab zinc was essential to meet the consumption of 834,700 metric tons reported by the Bureau of Mines (MIS, December, 1982, Table 4) and for normal stocks in inventory and pipeline[1] zinc which were indicated to be approximately 100,000 metric tons at the end of December 1981, roughly a 45 day supply.

Zinc ores and concentrates are the raw materials from which slab zinc is made by producers. Slab zinc is the raw material of zinc alloyers, galvanizers and brass and bronze processors. These latter plants produce intermediate products for the casting industry, the steel industry, and the foundry industry. Their products become components of automobiles, computers, builders' hardware, electronic equipment, electric utilities, and a long list of other consumer items.

The duty treatment of slab zinc is costly to the American public and does nothing to protect the U.S. zinc producing industry.

Since the U.S. penny was converted to a zinc from a copper coin, the U.S. Bureau of the Mint has bought thousands of tons of zinc to meet its requirements. On at least two occasions as reported in the American Metal Market, November 2, 1983 and February 28, 1984, the Mint has made purchases from easily identified foreign sources. In the first purchase the Mint paid $16,849.93 in duty. On the second occasion the Mint paid $28,275.00 to satisfy the 1.7 percent ad valorem duty.

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[1] Pipeline material here is considered zinc in transit between production, processing plants, and consumers.

(An inquiry from the IZAA to the Treasury Department to determine total foreign purchases is being processed under the Freedom of Information Act. When it is received, we will provide it to the Subcommittee.)

The average price of high-grade zinc (the base grade for slab zinc pricing) in 1981 was 44.99 cents per pound, according to the American Metal Market, the journal of record for prices in the industry.

If all the slab zinc imported into the United States in 1981 had been high grade, the duty would have cost the public $9,868,800. Since at least 25 percent of the imported zinc was purchased by zinc alloyers who use only special high-grade (shg) zinc, which sells at a half-cent premium over high grade, the total duty passed on to the public was higher than stated.

The price of slab zinc has risen 39 percent from 38 cents per pound to 53 cents per pound over the last eight months.

In 1984, it is estimated, based upon an anticipated average high-grade price of 55 cents per pound for the year and at least the same level of imports as 1983, 630,000 metric tons, and a 1.7 percent ad valorem duty, that the cost of this ineffective, virtually punitive duty will be over $11,700,000.

This duty does not keep imported slab zinc out of the United States. Indeed, we cannot afford to restrain imports of slab zinc because domestically we produce at best only 30 percent of our requirements. Moreover, it would seem reasonable that domestic producers would sell all their zinc in a market more than twice the size of their production capacity.

In a decision in 1978, the International Trade Commission ruled that imports of slab zinc were not a substantial cause of injury to the U.S. producing industry. Nevertheless, since then at least two more zinc producing companies have withdrawn, leaving 70 percent of the market to imported slab zinc.

EFFECTS OF DUTY SUSPENSION ON THE INDUSTRY

ASARCO, perhaps the oldest domestic producer of slab zinc, within 15 months has gone in and out of the slab zinc business, regardless of the duty. The company has recently announced reopening of its zinc producing facilities in Corpus Christi, Texas, as a result of concessions from labor unions in recently completed negotiations, and lowered energy costs.

The unnecessary cost effect of the duty on imported slab zinc is felt by the alloyers, the galvanizers, and the brass and bronze manufacturers who must import vast quantities of slab zinc; the casting and steel manufacturers who process zinc; and by the ultimate product consumer who pays the bill.

For now and for the foreseeable future this country is zinc poor and zinc dependent. As independent alloyers, we have a vital stake in the zinc industry here and around the world. We have a primary interest in protecting our access to special high grade zinc metal. Because of the international scope of our business interests, we have had to develop programs and policies that focus on the essential needs of this nation for a reliable supply of zinc.

Until the mid-1950s, independent zinc alloyers could purchase most of the special high grade metal we needed from domestic producers. There was sufficient smelting activity in the United States to meet our needs. Shortly after the Korean War, demand increased and a domestic shortage of the metal began to develop. We were forced to seek foreign sources and from that time until the present, we have had to rely increasingly on foreign metals to meet our needs.

In 1958 there was an attempt to restore the vitality of the domestic industry. By Presidential proclamation, annual quotas were imposed on lead and zinc imports. These quotas did not work.

From 1959 to 1966, with the quotas in force, domestic slab zinc production increased 29.7 percent but total slab zinc consumption increased 57 percent. In this same period, the highest increase in domestic production of special high grade slab zinc was 45.5 percent while the highest increase in consumption of special high grade was 64 percent both in 1965.

Suspension of the 1.7 percent duty at least will moderate price increases of slab zinc; help make zinc more competitive with other materials; and enable die casters to keep people in their jobs for the production of zinc castings for consumer product components.

Because of a rising price curve, increasing the costs of the duty to U.S. consumers, 1984 is the time to redress this unnecessry duty on slab zinc by at least suspending it for a three-year period. It is likely, as in the long suspended duty on zinc ores, that the suspension of the duty on slab zinc will not affect adversely the U.S. zinc industry, but instead will help stimulate increased use of zinc at lower prices.

SLAB ZINC IMPORTS AND THE INDEPENDENT ALLOYERS

The zinc alloyers perform an extremely vital step in the process by which zinc is converted into one of the most versatile and useful elements in America today. Zinc alloying companies are responsible for assuring a continuous supply of zinc alloy to the casting and forging industry. This zinc must be processed from special high grade metal bacause of its purity and this metal must be imported because it is not available in sufficient quanties in this country to meet the demand.

As a matter of good business and sound economic practices dictated by mining and smelting realities in the United States, independent alloyers for the past three decades have had to purchase their metal form Canada and Mexico, Peru, Australia, European nations, Japan and many other countries.

The United States Tariff Commission reported to Congress, March 1960, after the quotas had been in effect 15 months, that they had not proved to be a satisfactory means of curtailing imports. The Commission said the quotas were discriminatory in their efforts and seriously interfered with normal trade relations.

In May 1962, the Tariff Commission again reported to Congress that two additional years of experience with the import quotas substantiated the earlier conclusions. The Commission said the quotas "have not appreciably improved conditions in the domestic lead and zinc mining industy."

In 1964 and 1965—with the quotas still in force—the domestic demands for special high grade slab zinc could not be met, despite the fact that the zinc producing industry and six years to strengthen itself to meet annual demands under the protection of the quotas.

To solve the problem of those two years, legislation was passed to release zinc from the national stockpile. Virtually all that was sold was special high grade. Without that emergency supply, automobile production would have been seriously impeded and the general economy would have suffered.

As a result of the obvious conclusion that the quotas had failed to accomplish their purpose and, in fact, posed a substantial boomerang threat against the national economy, they were removed after the experience of 1964-1965.

Mineral exploration and development are high cost, high risk endeavors. We must question whether zinc self-sufficiency is a viable, realistic industrial, economically sound and desirable objective.

We oppose the imposition or removal of barriers that interfere with mutual international cooperation to assure the metal needed to supply American industry and to provide American jobs. The IZAA supported, before the Trade Policy Staff Committee, the suspension of the remaining duties on zinc ores and concentrates and slab zinc while at the same time supporting the tariff on other zinc items.

We feel that the U.S. Government should maintain those parts of our international trade policies that aid and abet a viable segment of any industry.

It is sound, realistic and timely trade policy to permit ores, concentrates and slab zinc to come into this country uninhibited by duty and it is economically disadvantageous to permit the free flow of zinc alloys. Zinc alloying is a vital and strong segment of the economy. We have developed and supported this policy so that continued growth can be assured for both zinc alloyers and zinc die casters. Should the zinc die casters be thrown upon U.S. producers for all of their requirements for zinc alloy, there would be neither the domestic resources nor the dometic in-place capacity to supply their needs.

There is today in the U.S. an ability on the part of independent alloyers to have material readily available for instant delivery to die casters so they may provide promptly the hundreds of industries they serve with the parts required for consumer and manufacturing businesses.

IZAA members, and all zinc alloyers, are primarily concerned with their customers, the die casters. It is the role of the zinc alloyer to provide an assured supply of metal to our consumers, and to do so we have developed strong bonds with the international market.

When U.S. producers began their decline more than a decade ago, the independent alloyers responded to the needs of the die casters by securing a set aside of the GSA stockpile metal for consumers and by funneling increased quantities of slab zinc into the domestic industry from foreign producers. As domestic producers shut down their plants, we were able to provide the stability of supply to meet the U.S. needs. Each time zinc alloyers have faced difficult times because of shortages of slab zinc or surges in demand for alloy, they have developed new policies and new techniques for strengthening their position within the structure of the zinc industry and with our die casting customers and their consumers.

As the United States matures in its international trade policies, suspending and removing duties where we are in short supply, maintaining or levying duties where U.S. investment and jobs can be lost, and our country resumes its position as an aggressive world industry leader, it is equitable to assure duty free raw materials for zinc producing and alloying industries. Each of these segments of the industry are channels of distribution for major quantities of zinc into the rest of the U.S. zinc using industrial world. That world should not have to pay a premium of 1.7 percent ad valorem on zinc alloy anymore than it should pay a duty on zinc ores.

The IZAA respectfully requests that the Subcommittee report out H.R. 5010.

WRITTEN COMMENTS

[For immediate release, No. 35, Monday, April 23, 1984]

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES REQUEST FOR WRITTEN COMMENTS ON CERTAIN TARIFF AND TRADE BILLS

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade is requesting written testimony for the record from all interested parties on the miscellaneous tariff and trade bills listed below.

If written comments indicate any significant controversy over a particular bill, oral testimony would be scheduled prior to Subcommittee action.

The bills listed below and the previous list of miscellaneous tariff and trade bills included in Subcommittee press release #29 complete all bills to be considered this session.

The tariff and trade bills on which written testimony will be received are:

H.R. 2860.—(Mr. Torricelli): For the relief of SSC International, Inc., of Hackensack, New Jersey.

H.R. 3559.—(Mr. Pease): To improve adjustment assistance for firms under the Trade Act of 1974.

H.R. 3983.—(Mr. Heftel, Mr. Dorgan, et al.): Regarding the operation of certain duty-free sales enterprises.

H.R. 4178.—(Mr. McKinney): To amend the Tariff Act of 1930 to increase from $250 to $1,500 the value of goods eligible for informal entry, and for other purposes.

H.R. 5182.—(Mr. Bonker): To amend the Tariff Schedules of the United States to clarify the duty treatment of certain types of plywood.

H.R. 5206.—(Mr. Bedell, et al): To authorize the imposition of additional duties on swine and pork products of Canadian origin in order to offset competitive advantages resulting from any government subsidy that may be provided to Canadian swine producers.

H.R. 5283.—(Mr. Schulze): To suspend until July 1, 1987, the duty on lace-braiding machines and parts thereof.

H.R. 5284.—(Mr. Schulze): To suspend until July 1, 1987, the duty on narrow fabric looms and parts thereof.

H.R. 5337.—(Mr. Schulze): To amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips, and sheets of acrylic plastic materials.

H.R. 5338.—(Mr. Schulze): To provide for the temporary suspension of the duty on mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and magnesium nitrate.

H.R. 5339.—(Mr. Schulze): To provide for the temporary suspension of the duty on mixtures of potassium 1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate ("Fenridazon-potassium") and formulation adjuvants.

H.R. 5368.—(Mr. Sundquist): To suspend for a 3-year period the duty on amiodarone.

H.R. 5389.—(Mr. Vander Jagt and Mr. Frenzel): To temporarily suspend until September 30, 1988, the duty on tetra amino biphenyl.

H.R. 5410.—(Mr. Matsui): To extend duty-free treatment to scrolls or tablets imported for use in religious observances.

H.R. 5422.—(Mr. Albosta): Relating to the tariff classifications of certain silicone resins and materials.

H.R. 5429.—(Mr. McNulty and Mr. Udall): To provide for the duty-free entry of articles required for the installation and operation of a telescope in Arizona.

H.R. 5436.—(Ms. Oakar): To provide for the duty-free entry of organs imported for the use of Trinity Cathedral of Cleveland, Ohio.

H.R. 5448.—(Mr. Conable): To provide duty-free treatment of articles previously imported, with respect to which duty was previously paid.

H.R. 5449.—(Mr. Conable): To provide for fast-track treatment of injurious agricultural imports.

H.R. 5453.—(Mr. Gibbons and Mr. Frenzel): To authorize the President to proclaim modifications in the rates of duty for certain articles in trade in civil aircraft.

H.R. 5454.—(Mr. Glickman): To extend duty-free treatment to certain tractor parts.

H.R. 5455.—(Mr. Glickman): To amend the Tariff Schedules of the United States to clarify the classification of unfinished gasoline.

H.R. 5462.—(Mr. Livingston): To amend the Tariff Act of 1930 to provide that certain imports of plywood be admitted free of duty.

H.R. 5469.—(Mr. Schulze): To amend the Tariff Schedules of the United States in order to establish equitable duty rates for waterbed mattresses, liners, and parts thereof.

DETAILS FOR SUBMISSION OF WRITTEN STATEMENTS

Persons submitting written statements should submit six (6) copies of their statements by the close of business Friday, May 18, 1984, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515.

Each written statement submitted to the Subcommittee for the record must contain the following information:

1. The name, full address, and capacity of the person submitting the statement (as well as a telephone number where he or his designated representative may be reached);
2. A list of any clients of persons, or any organization on whose behalf the statement is submitted; and
3. A topical outline or summary of the comments and recommendations in the statement.

[For immediate release, No. 37, Thursday, May 3, 1984]

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES REQUEST FOR WRITTEN COMMENTS ON A CERTAIN TARIFF AND TRADE BILL

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade is requesting written testimony for the record from all interested parties on one more tariff and trade bill in addition to the previously published list of tariff and trade bills released April 23, 1984 (Subcommittee press release #35).

The additional bill is listed below:

H.R. 5228.—(Mr. Gibbons, Mr. Conable, Mr. Vander Jagt, and Mr. Frenzel): To authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements.

DETAILS FOR SUBMISSION OF WRITTEN STATEMENTS

Persons submitting written statements should submit six (6) copies of their statements by the close of business Friday, June 1, 1984, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515.

Each written statement submitted to the Subcommittee for the record must contain the following information:

1. The name, full address, and capacity of the person submitting the statement (as well as a telephone number where he or his designated representative may be reached);
2. A list of any clients or persons, or any organization on whose behalf the statement is submitted; and
3. A topical outline or summary of the comments and recommendations in the statement.

GENERAL COMMENTS

STATEMENT OF DAVID J. STEINBERG, PRESIDENT, U.S. COUNCIL FOR AN OPEN WORLD ECONOMY, INC.

(The U.S. Council for an Open World Economy, Inc. is a private, nonprofit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

The Council supports the bills that would suspend or remove tariffs, and (in the case of H.R. 5228) the bill that would authorize accelerating by no more than one year the effective dates of agreed duty reductions. U.S. firms and unions that may oppose such bills would be better advised to find constructive remedies addressing the real problems and needs of these industries in the face of foreign competition, in contrast to tariffs and other barriers which are really simplistic subsidies which the American people have to pay and for which no net benefit to the public interest is made clear and convincing.

The rest of this brief statement is limited to the bills cited below. Absence of comment on bills not mentioned in this statement should not be interpreted as signifying either support for or opposition to such measures.

H.R. 3559—a bill to improve adjustment assistance for firms under the Trade Act of 1974. While we support the general concept of adjustment assistance to deserving firms, workers and communities found to have been seriously injured by imports, we do not believe that this bill suitably addresses the nation's needs in this policy area. A U.S. industry that needs and deserves government help in the face of "targeting" policies by a foreign country ("a policy or plan that selectively and systematically supports the development and nurturing of any industry to enhance its competitiveness in domestic or export markets") should be the subject of a coherent redevelopment strategy including reassessment of all government statutes and regulations that materially affect the industry's ability to adjust to new international realities. Such redevelopment strategy may call for mergers or other restructuring, in contrast to government assistance to all firms needing help. The bill's requirement of an industry plan does not meet what we have in mind.

Among the bill's provisions to which exception may properly be taken are the shortcomings of Section 7. This section requires that, immediately on the start of an International Trade Commission 201 investigation concerning an industry, the Secretary of Commerce (a) must begin a study of the U.S. firms likely to be eligible for adjustment assistance and the extent to which the orderly adjustment of such firms may be facilitated through existing programs, and (b) must immediately require the industry to prepare an adjustment plan to enable it to adjust to changing economic conditions. Although the proposed details of such a plan are among the components that belong in an industry adjustment strategy (including possible restructuring, labor retraining, and productivity improvement), presentation of such a plan should be required as part of the industry's 201 petition to the ITC and taken into account in the Commission's decision. Implementation of the plan (including commitments by firms and workers, for which these firms and workers should be held fully accountable) should be a condition for any import-relief or other government aid to the industry. The import-relief section of the Trade Act should be modified to encompass such reform.

H.R. 5206—a bill to authorize additional import duties on swine and pork products of Canadian origin to offset competitive advantages resulting from any government subsidy that may be provided to Canadian swine producers. It seems to us that any problems likely to result from such Canadian subsidies could and should be handled through the anti-subsidy provisions of the overall trade legislation.

H.R. 2860

For the relief of SSC International, Inc., of Hackensack, New Jersey.
No comments were received on this bill.

H.R. 3559

To improve adjustment assistance for firms under the Trade Act of 1974.
See comments of the U.S. Council for an Open World Economy, Inc., at p. 342.

H.R. 3983

Regarding the operation of certain duty-free sales enterprises.

STATEMENT OF DUTY FREE SHOPPERS GROUP LTD.

SUMMARY

Duty Free Shoppers Group Ltd. (DFS), which operates duty-free stores at several major airports in the United States and abroad, strongly supports H.R. 3983. The bill would solve two problems that threaten the future viability of duty-free stores:

First, it would give express statutory recognition to duty-free shops as a special type of customs bonded warehouse. Because this recognition has been lacking, duty-free shops have been regulated through directives issued by the United States Customs Service. This system of regulation leaves the operation of duty-free stores constantly subject to the whims of administrative expedience.

Second, the bill would permit only authorized concessionaries to operate duty-free shops at international exit points. This restriction against unauthorized duty-free operators is necessary to preserve the revenues produced by duty-free shop concessions for state and local airport authorities.

DFS believes that duty-free shops are of great value to federal, state and local authorities and deserve the protection contemplated in H.R. 3983. The benefits generated by duty-free stores include the following:

Authorized duty-free stores pay substantial concession fees to airport operating authorities. In some states, such as Hawaii and Alaska, duty-free concession fees account for very large percentages of the total state airport operating revenues.

Duty-free stores induce foreign visitors to increase there overall expenditures in the U.S. In large part, these increased expenditures are in addition to purchases foreign visitors make at retail establishments.

The attraction of duty-free stores increase tourism in the United States, which has a beneficial ripple effect on retail sales and employment in the U.S.

DFS believes it is clear that duty-free stores result in significant benefits for the U.S. economy at the national, state and local levels. H.R. 3983 includes important measures designed to preserve these benefits. Accordingly, DFS urges the Committee to approve H.R. 3983.

STATEMENT

Mr. Chairman And Distinguished Members Of The Subcommittee: Duty Free Shoppers Group Limited ("DFS"), by its counsel, Patton, Boggs & Blow, welcomes the opportunity to testify in support of H.R. 3983, regarding duty-free sales enterprises.[1]

DFS operates duty-free stores at major airports in the United States and elsewhere, including stores in Honolulu, Los Angeles, San Francisco, Anchorage, Boston and New York City (J.F.K. International Airport). DFS operates all of these stores pursuant to concessions granted to it by the state and local government authorities that administer the airports. In return, DFS pays a portion of the revenue from its stores to these airport authorities in the form of concession fees. Those fees are substantial. For example, in 1983, DFS paid nearly $30 million in concession fees to the State of Hawaii. Those fees alone accounted for 28% of the gross operating revenue of Honolulu International Airport and the state airport system.

DFS wishes to express its appreciation to the sponsors of H.R. 3983, Congressmen Cecil Heftel, Daniel Akaka and Byron Dorgan, for the enormous help and support that they have given to duty-free stores in recent years. This bill is a further reflection of these distinguished Members' recognition of the important benefits that duty-free stores provide to our national and, more important, state and local, economies.

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[1] DFS Group Limited is a Hong Kong corporation.

H.R. 3983 will help to remedy several serious problems that have recently confronted duty-free shop operators, particularly those operating under concessions granted by state and local authorities. The first problem stems from the fact that there is at present no specific statutory recognition of duty-free shops. Rather, duty-free shops are regulated almost entirely through directives issued by the United States Customs Service ("Customs"). This lack of explicit statutory recognition has, in certain respects, made duty-free shops subject to the vagaries of Customs. In fact, Customs has recently gone so far as to propose the total abolition of duty-free stores by administrative fiat! Giving duty-free shops express statutory recognition would eliminate this threat.

Furthermore, by permitting only authorized concessionaires to operate duty-free shops where states so require, H.R. 3983 will preserve to the states and localities concerned the concession fees that they derive from duty-free shop operations. As noted, the revenues derived from those fees are substantial. In 1980, duty-free stores located at the United States' 20 largest international airports paid a total of more than $60 million in concession fees to airport operating authorities. If unauthorized duty-free operators are permitted to take sales away from authorized concessionaires, those states and localities would be deprived of this significant source of airport revenues.

In addition, restricting Cutoms' supervision over duty-free stores to authorized concessionaires will serve the important objective of conserving Customs' resources at a time when those resources are already stretched thin.

Background on Duty-Free Stores

Duty-free stores have existed as a form of Customs bonded warehouse for many years. The regulation of duty-free stores has developed within the framework of the Federal statutes and Customs' regulations governing bonded warehouses in general, supplemented periodically by Customs policy directives and issuances relating specifically to duty-free shops.

As H.R. 3983 indicates, duty-free sales enterprises sell duty-free and tax-free merchandise only to persons departing from the United States.

The merchandise is either foreign merchandise that has been imported into the United States free of duty, or domestic merchandise on which internal revenue taxes have not been paid. Such merchandise is exempt from duty and tax because it is to be exported from the United States rather than consumed here.

The evolution of duty-free stores, both at airports and along our land borders with Canada and Mexico, has been substantially influenced by the increased popularity and ease of international travel, the burgeoning of international trade, historical relationships between communities along our Canadian and Mexican borders and a variety of local conditions. These factors have led to the widespread development and success of duty-free stores, a success that our country shares in common with many other countries having substantial international travel. Duty-free shopping has become an accepted, and expected, benefit of international travel.

Duty-free stores initially developed in response to the increase in travel, occasioned by the private ownership of automobiles, between the United States and Mexico and Canada. Later, as air travel became more popular and accessible, duty-free stores grew as a natural adjunct to the increase in international air travel. Since the advent of the "jet age," sharply increased usage of duty-free stores at airports has given them their current status as an essential part of the international travel.

Benefits of Duty-Free Stores

There are more than 125 duty-free stores throughout the United States. Forty-nine such stores are located at international airports, with the remainder located along our Canadian and Mexican borders. These duty-free shops provide substantial economic benefits to the national economy and to the states and localities in which they operate.

The primary economic benefit of duty-free stores is that they increase the amount of money spent by foreign visitors in the United States. Indeed, it was for this very reason that duty-free stores were created. According to Customs, the original purpose of duty-free shops was: "to accommodate in-transit and departing passengers at airports located in areas distant from principal shopping areas, so they could make purchases that would not otherwise be made. It was designed to create a net increase in consumer expenditures in the U.S. . . ."

C.I.E. 9/78 (February 16, 1978). *See also* Manual Transmittal 3200-61 (April 14, 1981) ("the intent behind the original directive to allow the establishment of duty-free shops was to permit net increase of international sales made in the United States . . ."). Duty-free shops have fulfilled this purpose.

In 1980, the latest year for which accurate aggregate statistics are available, gross revenues from only those duty-free stores located at the 20 leading international airports in the United States totaled $284.5 million. These figures do not take into account the revenues derived by the many duty-free stores located along the Canadian and Mexican borders or the stores located at the more than 10 other international airports throughout the United States. These revenues contribute significantly to the United States balance of trade, as well as to the tax base of Federal, state and local governments.

It is important to recognize that most of the revenues generated by duty-free stores are in addition to, not in place of revenues that could be generated by other retailers. It has been estimated that of the aforementioned $284.5 million in duty-free shop revenues, more than $200 million could not otherwise have been realized by other retailers.

Duty-free stores generate revenues for our national economy not only directly through purchases at such stores, but also by attracting tourists to the United States. Tourism is highly price-sensitive. If the United States did not have duty-free stores, foreign air passengers, particularly transit passengers, might re-route their trips through Canada or Mexico and make duty-free purchases in those countries.

The increased revenues generated by duty-free shops create employment in the duty-free store, supplier and other tourist-related industries. In Hawaii alone, DFS employs more than 1,400 people. At all of its United States stores, DFS employs 1,900 persons. Considering that these stores constitute only 6 of the more than 125 duty-free stores operating in the United States, it is readily apparent that employment in the duty-free industry itself runs into the thousands. In addition, the duty-free business increases employment in the tobacco and liquor industries, which provide domestically-produced products for sale in duty-free stores; in the wholesale business, which supplies the imported products sold in duty-free stores; and in the transportation, cartage, loading and various other service businesses that support duty-free store operations. Moreover, employment in other businesses dependent on tourism is favorably affected by the increase in tourist expenditures for which duty-free stores are responsible.

Duty-free stores also generate revenues for the Federal Government and for the states and localities in which the stores are situated. Duty-free stores pay corporate income taxes to Federal, state and local governments, and their employees pay personal income taxes.

Even more important for many states and localities are the revenues generated by duty-free stores in the form of concession fees and rent paid to state and local airport and bridge operating authorities. As noted, in 1980, the duty-free stores located at the 20 largest international airports paid a total of more than $60 million in concession fees to airport operating authorities. In Hawaii, concession fees accounted for nearly 45% of the total revenues of the entire State airport system in 1981. In Alaska, concession fees accounted for nearly 26% of State airport operating revenues.

These concession fees are of great importance to airport and other transportation authorities. For example, under Federal law, airports are required to be "as self sustaining as possible" in order to qualify for Federal airport development funds. *See* 49 U.S.C. § 2210(a)(9). Concession revenues help them satisfy this requirement. In addition, several airports and bridge authorities rely on receipts from concession fees as security for development bonds. To deprive these authorities of this source of internally-generated revenue would run contrary to public policy.

Moreover, concession revenues play an important role in holding down landing fees and other user charges at airports and toll charges on international bridges. Such charges, if added to the cost of travel in the form of higher airline ticket prices or bridge tolls, could reduce the volume of travel to the United States.

This Committee, and other Congressional committees with jurisdiction over Customs, have already expressly stated that duty-free concession revenues received by the States and localities should be preserved. This Committee has stressed the importance of "preserving the significant revenues that such concessions provide to the States and localities." H.R. Rep. No. 105, 98th Cong., 1st Sess. 10 (1983). Similarly, the House Appropriations Committee has recognized that "concession fees derived from the duty-free sales operations of authorized concessionaires continue to constitute an important source of revenue for the governmental authorities that collect such fees." H.R. Rep. No. 229, 98th Cong., 1st Sess. 72 (1983).

It is clear, therefore, that duty-free stores result in important benefits for our economy at both the national and in important benefits for our economy at both the national and local levels. All of these benefits are obtained at essentially no cost to the Federal Government, since duty-free shop operators reimburse Customs for the full cost of services performed by Customs employees.

Recent Developments in the Regulation of Duty-Free Stores

Customs has described the duty-free store as "a Customs bonded warehouse operating under special procedures. . . ." *See* 48 *Fed. Reg.* 33318 (July 21, 1983). What is "special" about the procedures governing duty-free shops is that they are found in Customs policy directives, not in statutes or regulations. This virtual hegemony of Customs over duty-free shop operations has enabled Customs, on several recent occasions, to propose changes in the regulation of duty-free shops that would have had serious adverse consequences for legitimate duty-free shop operators and for the states and localities that benefit from their operations. In each case, Congressional action was needed to prevent Customs from acting.

In November 1981, Customs abandoned its long-standing policy of supervising the duty-free operations of only authorized concessionaires (where concessions were required) located at airports and other exit-point facilities. It adopted a policy that would have permitted Customs to be used as the intermediary in an entirely foreign sale—*i.e.,* an international passenger could place an order and pay for duty-free merchandise in Paris; the merchandise, stored in a Customs bonded warehouse in the United States, would be loaded onto the traveler's aircraft—under Customs supervision—during a stopover in the United States; and the item would be delivered to the traveler in Tokyo. Such sales would have produced no revenue to the Federal Government, no concession fees to the state or local airport authority and no revenue to the authorized duty-free operator, but would have consumed Customs' resources.

In response to Customs' policy change, the Committees on Appropriations of both the House and the Senate included a provision in the Treasury, Postal Service and General Government Appropriation Bills for Fiscal Year 1983 that effectively prohibited Customs from implementing its policy changes. *See* H.R. 7158, 97th Cong., 2d Sess § 506 (1982); S. 2916, 97th Cong., 2d Sess § 507 (1982). This provision was given legal effect through the Continuing Appropriations Acts for that fiscal year.

While that prohibition was in effect, Customs announced, in February, 1983, a policy, purportedly implementing that prohibition, that would have forced out of business a number of duty-free stores operating in areas where concessions are not required, primarily at border crossings along the Canadian and Mexican borders. Only after this Committee, *see* H.R. Rep. 105, 98th Cong., 1st Sess. 10 (1983); the House Appropriations Committee, *see* H.R. Rep. 229, 98th Cong., 1st Sess. 72 (1983); several Members of Congress from affected districts (including the sponsors of H.R. 3983); and the Chairmen of the relevant subcommittees of the House and Senate Appropriations Committees expressed strong objections to Customs' proposed action did Customs agree not to implement that policy.

Shortly thereafter, in July 1983, Customs published an Advance Notice of Proposed Rulemaking ("ANPR") proposing sweeping changes in the operation and status of duty-free stores. 48 *Fed. Reg.* 33318 (July 23, 1983). Among the proposals advanced by Customs was the total abolition of duty-free shops. Customs is still in the process of evaluating and assessing the hundreds of comments, including many from Members of Congress, that it received in response to that ANPR.

Need for H.R. 3983

The actions by Customs described above, and the need for Congressional action that they engendered, highlight the necessity of giving the express statutory recognition and authority to duty-free shops that H.R. 3983 provides. By providing a firm grounding in permanent legislation for their existence, duty-free stores will be able to operate free from the threat that Customs may, for reasons of administrative expediency or otherwise, abolish them.

Furthermore, by requiring that duty-free sales enterprises, where required, obtain concessions or other required approvals from authorities that operate exit point facilities, H.R. 3983 will ensure that those state and local authorities that have come to rely upon concession revenues will not be deprived of such revenues. In that way, this Committee will preserve and protect the ability of these authorities to regulate their affairs and to generate much-needed operating funds.

DFS respectfully urges this Committee to approve H.R. 3983.

STATEMENT OF A. G. (GERRY) COLE, EXECUTIVE DIRECTOR, HONOLULU AIRLINES COMMITTEE

Mr. Chairman, Members of the Committee on Ways and Means: My name is Gerry Cole, and on behalf of the Honolulu Airlines Committee, I thank you for the opportunity to submit testimony in support of H.R. 3983 which proposes that section 555 of the Tariff Act of 1930 be amended to require operators of duty-free enterprises to demonstrate to the Secretary of the Treasury that State and local requirements have been met before said operators may withdraw merchandise from bonded warehouses for delivery to an airport, seaport or point of exit from the U.S.

To understand more fully our concern regarding this Bill may we explain that the Honolulu Airlines Committee represents 19 air carriers, both foreign and domestic, serving the State of Hawaii. These carriers operate under a series of Master Lease Agreements with the Department of Transportation which impose on them the responsibility for making up deficiencies in revenues needed to develop, maintain and operate the Statewide Systems of Airports. The airlines make up these deficiencies by payment of an Airport Use Charge based upon a unit charge per thousand pounds of landed weight. Thus, we have a vested interest in the Airport System and a continuous obligation for its financial support. This makes us highly sensitive to any possible reduction in airport revenues which may result without effective local control of in-bond sales at the Honolulu International Airport.

Our concern has been heightened in recent years because a duty free operator (liz Duty Free, Ltd.) was able to satisfy customs procedures without regard to local requirements and actually delivered duty free merchandise to the Los Angeles International Airport without any fee payment to the Airport Authority.

This same operator also petitioned the U.S. Customs Department for permission to establish a bonded warehouse in Honolulu from which to deliver duty free merchandise to the Honolulu International Airport.

In testimony before a joint hearing of the Consumer Protection and Transportation Committees of the Hawaii House of Representatives on March 27, 1982 would-be duty free operators expressed the opinion that they would develop markets not currently served by the present regulated duty free concessionaire.

We do not believe uncontrolled operators will stimulate new or expanded markets as some of them have stated. Conversely, we believe that they will skim the cream off the current lucrative market but at a much smaller, if any, percentage to the Airport Fund than the concessionaire who was the successful competitive bidder and who now pays a substantial fee to the State of Hawaii for the privilege of selling and delivering the same in-bond merchandise to the Airport. The magnitude of potential revenue loss to the State can be dramatically illustrated.

If operators of Duty-Free Enterprises can, through Federal Regulations, or lack thereof, deliver in-bond merchandise to the Honolulu International Airport without observing State regulations and bidding procedures they obviously can not only undercut prices set by the successful bidder, thus depriving the Airport Fund of substantial revenues, but may well give the regulated airport concessionaire a cause of action to force complete elimination of his fees because of the "Favored Nation" clause in his agreement with the State.

For the 1983/84 fiscal year revenues from duty-free sales will approximate $31.5 million. If Airport revenues were reduced by such a sum, Use Charges assessed the airlines would increase by an approximate $2.00 per thousand pounds of landed weight. In the case of a 747 aircraft with an average permissible landing weight of 564,000 pounds, this would mean an additional charge of $1,128.00 per landing which ultimately would have to be absorbed by the airlines' passengers.

We believe that such additional expense to passengers might well have a negative impact on air travel which in turn could adversely affect Hawaii's chief industry—Tourism.

It is for these reasons that we respectfully request your favorable endorsement of H.R. 3983 for further consideration by the Congress.

Thank you.

H.R. 4178

To amend the Tariff Act of 1930 to increase from $250 to $1,500 the value of goods eligible for informal entry, and for other purposes.

STATEMENT OF JOSEPH BERG, PRESIDENT, AIR EXPRESS INTERNATIONAL CORP., AND PRESIDENT, AIR FREIGHT ASSOCIATION

The Association is a nationwide trade organization which represents a large segment of the air cargo industry. Our members include airlines, air freight forwarders, and companies which provide both services to the U.S. shipping public. A list of AFA members is attached hereto as Exhibit I.

Most of the members of the air freight industry operate internationally as well as domestically and are therefore vitally interested in any legislation designed to ease the Customs entry process. H.R. 4178 is one such piece of legislation. At a time when budget cuts and an ever increasing number of imports threaten to swamp the U.S. Customs Service with more work than it can efficiently handle, any move to simplify customs procedures must be viewed as a positive step. Such legislation now sits before this Subcommittee and should be expeditiously approved. Introduced by Representative Stewart McKinney of Connecticut, House Bill H.R. 4178, as presently written, would amend the Tariff Act of 1930 to increase from $250.00 to $1,500.00 the amount allowed for informal entry of commercial goods.

Under the provisions of informal entry, the consignee is permitted to pay duties and obtain imported goods whose value does not exceed the legal limit at airport customs stations at the time of their arrival. In turn, reduced paperwork and lower brokerage fees (which can amount to as much as 50% less, if a broker is used) make informal entry a particular asset to small businesses. The inability to use this procedure on shipments with a value of over $250.00 creates an artificial, government-imposed, restriction on international trade and creates unfair and unwarranted burdens on customs personnel who are currently past the limits of their efficient capabilities.

When originally signed into law as the nation's basic customs legislation, the Tariff Act of 1930 provided for a $100.00 value limit for informal entry of commercial merchandise into the United States. This amount was increased to $250.00 in 1953 and has remained there ever since, notwithstanding the fact that significant inflation has reduced the purchasing power of the dollar to approximately one-quarter of its 1953 value. Thus, precisely the same goods which once qualified for informal entry now must be treated as a formal entry, a much more cumbersome, time-consuming and expensive process. The net result of the use of the out-dated $250.00 limit, coupled with the inflation rate since 1953, has been to violate the clear intent of the customs laws. A new, updated, limit is needed now to cure this inequitable situation.

In further support of S. 4178, it should be noted that some of our major trading partners, Canada, for example, have higher informal entry limits. In addition, other individual supporters of a change in U.S. law will undoubtedly come from the growing international small package trade, as the value of most small packages falls squarely within the $250.00 to $1,000.00 range. For example, my company, Air Express International, one of the country's major international air freight forwarders, is currently handing approximately 10,000 shipments per month from the United States under it "Interpak", or door-to-door, service, but only 500 such shipments into the United States. The major reason for this imbalance is the current $250.00 informal customs entry limit.

Finally, perhaps the most telling argument in favor of the immediate passage of H.R. 4178 is that it will assist the U.S. Customs Service in performing its functions. More informal entry results in less work for the harried agency, whose workforce is barely able to keep up with its required tasks. Therefore, the passage of H.R. 4178 will prove to be as great an assist to the Customs Service as it will to businesses, large and small, throughout the country.

Finally, it should be noted that legislation similar to H.R. 4178 has already been reported out of the Senate Finance Committee and has been consolidated in a package of non-controversial trade legislation now ready for final Senate action (H.R. 3398). The precise wording of the Senate bill, which is acceptable to the members of the Association, was written to accommodate the legitimate concerns of the U.S. textile and leather products industries and was not objected to by either of these industries (see Exhibit III). The only substantive differences between H.R. 4178 and the Senate version are that the dollar limit in the Senate bill is $1,000, not $1,500, and the items exempt from this increased limit are set forth in more detail. For the convenience of the Committee, attached as Exhibit II is an annotated version of H.R. 4178 to reflect the wording now before the Senate in H.R. 3398.

In summary, the expeditious passage of H.R. 4178 will both facilitate international trade and will improve the efficiency of the U.S. Customs Service. Therefore, the Air Freight Association strongly supports its passage as quickly as possible.

EXHIBIT I

AIR FREIGHT ASSOCIATION MEMBERSHIP LIST

AIR EXPRESS INTERNATIONAL	Darien, Connecticut
AIRBORNE FREIGHT CORPORATION	Seattle, Washington
AIRSPEED, INC.	Inglewood, California
AMERFORD INTERNATIONAL CORPORATION	Jamaica, New York
AMERICAN AIRLINES, INC.	Dallas/Ft. Worth, Texas
ASSOCIATED AIR FREIGHT	New Hyde Park, New York
THE AVIATION GROUP	Raleigh, North Carolina
BURLINGTON NORTHERN AIR FREIGHT	Irvine, California
CAM AIR INTERNATIONAL	Miami, Florida
COMBS AIRWAYS, INC.	Denver, Colorado
EMERY WORLDWIDE	Wilton, Connecticut
EVERGREEN INTERNATIONAL AIRLINES	McMinnville, Oregon
FLYING TIGER LINE	Los Angeles, California
GENERAL AVIATION, INC.	Greeneville, Tennessee
IMPERIAL AIR FREIGHT	Newark, New Jersey
INTERSTATE AIRLINES	Ypsilanti, Michigan
NORTH AMERICAN VAN LINES	New Haven, Indiana
PILOT AIR FREIGHT	Lima, Pennsylvania
PROFIT FREIGHT SYSTEM	Los Angeles, California
PUROLATOR COURIER CORPORATION	New Hyde Park, New York
SMB STAGE LINE, INC.	Dallas/Ft. Worth, Texas
SOUTHERN AIR TRANSPORT	Miami, Florida
SUMMIT AIRLINES, INC.	Philadelphia, Pennsylvania
SURFAIR	Atlanta, Georgia
TRANSAMERICA AIRLINES	Oakland, California
WTC AIR FREIGHT	Torrance, California

EXHIBIT II
p. 1 of 2

I

98TH CONGRESS
1ST SESSION

H. R. 4178

To amend the Tariff Act of 1930 to increase from $250 to $1,500 the value of goods eligible for informal entry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1983

Mr. MCKINNEY introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Tariff Act of 1930 to increase from $250 to $1,000 ~~$1,500~~ the value of goods eligible for informal entry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498(a)(1)) is amended—

(1) by striking out "$250" and inserting in lieu thereof "1,000" "~~$1,500~~"; and

(2) by inserting before the semicolon at the end thereof the following: ", except that this paragraph does not apply to textile goods and products valued in excess of $250, classified in— ~~merchandise subject to quantitative~~

EXHIBIT II
p. 2 of 2

"(A) schedule 3,

"(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

"(C) parts 2 and 3 of the Appendix, of the Tariff Schedules of the United States, or to any other article for which formal entry is required without regard to value."

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of the enactment of this Act.

~~import restrictions, articles subject to antidumping or countervailing duties, or any other article for which formal entry is required without regard to value".~~

~~SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after the date of the enactment of this Act.~~

EXHIBIT III
p. 1 of 2

S. Hrg. 98-557

MISCELLANEOUS TARIFF BILLS, 1983-84

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

OCTOBER 21, 1983

Printed for the use of the Committee on Finance

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EXHIBIT III
p. 2 of 2

Senator DANFORTH. Senator Mitchell.

Senator MITCHELL. No questions.

Senator DANFORTH. Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman.

Mr. Nehmer.

Mr. NEHMER. Yes, sir.

Senator MATSUNAGA. If we should exclude textiles from the increase, would you then favor the bill? *

Mr. NEHMER. Well, sir, I am here on behalf of two separate groups—fiber textiles and apparel, and leather products.

Senator MATSUNAGA. If we also exclude leather products, would you then favor the bill?

Mr. NEHMER. If you exclude schedules 3 and 7 there would be no basis for our opposition to this legislation. All of these products are included in those two schedules. And I don't think in schedule 7 there is very much other than what we have been talking about.

Senator MATSUNAGA. If we reduce the maximum importable amount to $500 or $750, would you then favor the bill?

Mr. NEHMER. Sir, I would have to say, insofar as these products are concerned there would still be a problem. I think I pointed out in my testimony that the average unit price of a flat goods or personal leather goods imported last year was 75 cents or 76 cents. A lot can come in at $500 or $600 or $750 and not be recorded in the actual statistics. That's the problem.

If you were to exclude textiles, apparel, the leather products that we are talking about, there would be no basis for our even being here today, obviously.

Senator MATSUNAGA. Yes; I understand.

As you know, and as has been pointed out, the $250 limitation was set back in 1953. There has been considerable inflation since then, you must admit. In 1953 were you opposed to the raising of the amount from $100 to $250?

Mr. NEHMER. No, sir. In 1953 I was in the U.S. Government, and I was not involved in this at all.

Senator MATSUNAGA. In the Customs Service.

Mr. NEHMER. No, sir. I was in the State Department, actually, in 1953.

I should point out, Senator, that in 1953 the import impact on these industries was nowhere as it is today. The textile import program didn't begin until 1957, with an agreement negotiated with Japan. There was no import penetration of 65 percent of footwear in 1953. If imports had 2 percent of the U.S. market it would have been a lot in 1953.

What we are talking about is the current situation, Senator, which has deteriorated so badly—as I know you are aware of—that this particular point of $250 versus $1,000 or some intermediate figure becomes a very serious problem to these import-impacted industries.

Senator MATSUNAGA. As you probably know, the Customs Service, including the employees, have approached me to do something about this, because they are overburdened with work with the $250 limitation. They miss the larger imports because they need to pay too much attention to the smaller ones. What do you say to them?

Air Transport Association, of America
Washington, DC, May 18, 1984.

Hon. **Sam M. Gibbons,**
Chairman, Subcommittee on Trade, Committee on Way and Means, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Air Transport Association (ATA), which represents virtually all of the nation's scheduled airlines, has an interest in H.R. 4178, introduced by Representative McKinney. The bill would increase the informal entry limitation from $250.00 to $1,500.00 and is now under consideration by the Subcommittee on Trade. The ATA supports the inclusion of H.R. 4178 in an omnibus tariff bill in order to reduce the cost of paperwork associated with importing merchandise, to improve Customs Service productivity with resulting savings, and to facilitate and encourage international trade.

As you know, Customs regulations issued under the Tariff Act of 1930 authorize the import of merchandise with an aggregate value not exceeding $250.00 to be introduced under informal entry procedures. The informal entry is a streamlined procedure unlike the formal entry and may be prepared by the Customs officer for the importer and requires no customs bond and no formal appraisement. Under the provisions of H.R. 4178, the threshold would be raised to permit items with an aggregate value not exceeding $1,500.00 to benefit from the speed and efficiency of informal entry procedures.

We believe that H.R. 4178 would achieve administrative and operational efficiency by granting Customs officers greater operational flexibility and will certainly decrease the present backlog of unappraised formal entry. Informal entry requires forms to be prepared by the shippers, and less complicated customs procedures apply. While formal entry processing time is measured in hours, informal entry may be processed in minutes and may be cleared on any day or time a customs inspector is on duty. Normally, formal entry can be cleared only Monday through Friday during working hours.

Raising the informal entry limit to $1,500.00 would eliminate thousands of formal entries each day. This reduction in workload would permit a reallocation of Customs Service inspection resources and thereby enhance the productivity of the Customs Service labor force. In addition to savings in the Customs Services' operating costs, the elimination of the paperwork involved in processing international parcels should lead to lower brokerage fees. If these cost savings are passed on to the consumer, there will be increased incentive for international trade.

In recent years, air delivery of packaged merchandise within the domestic market boomed, offering many opportunities for both large and small entrepreneurs to operate with minimum inventory investments and expertise. The international movement of parcels has been dampened by the existing $250.00 limit for informal customs entry. Established in 1953, this threshold is insensitive to inflation and unresponsive to growing demands for international commerce from all sectors of our economy. Some of our trading partners, Canada for example, have informal entry procedures which have higher limits, providing a benefit to their citizens and commerce.

We endorse and support H.R. 4178 and urge the subcommittee to include it in the tariff bill now under consideration.

Sincerely,

William J. Burhop,
Senior Vice President—Government Affairs.

Statement of the American Fiber, Textile, Apparel Coalition [1]

SUMMARY

AFTAC opposes H.R. 4178 in its present form. We recommend instead that the bill be amended to conform with Section 205 of H.R. 3398 which has been favorably

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[1] Members of the coalition are: Amalgamated Clothing & Textile Workers' Union, AFL-CIO; American Apparel Manufacturers Association; American Textile Manufacturers Institute; American Yarn Spinners Association; Carpet and Rug Institute; Clothing Manufacturers Association of U.S.A.; International Ladies' Garment Workers' Union, AFL-CIO; Knitted Textile Association; Luggage and Leather Goods Manufacturers of America; Man-Made Fiber Producers Association; National Association of Hosiery Manufacturers; National Association of Uniform Manufacturers; National Cotton Council; National Knitwear & Sportswear Association; National

Continued

reported by the Senate Finance Committee. Section 205 requires no further administrative determination as to what constitutes a "textile good or product" as would be the case with H.R. 4178. Additionally, this legislation should include language which will require the Census Bureau to continue to publish import data for the exempted products under Section 205 in their regular published statistical series.

The reasons why textiles and apparel should be excluded from an increase in the informal entry ceiling from $250 to $1,500 follow:

The MFA requires a sophisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. This requires precise customs documentation. There are already an indeterminate amount of apparel imports which do not get charged against negotiated quotas due to informal entry. An increase from $250 to $1,500 in the informal entry ceiling would result in considrably larger number of import shipments which will not be counted against negotiated MFA levels, greatly impairing the operation of the MFA.

A major priority for the import-sensitive textile and apparel industries is accurate trade data in order to analyze the economic impact of imports on the domestic market. An increase in the informal entry ceiling for textile and apparel shipments would be a detriment to the collection of accurate trade data.

Accurate trade data are also needed to set restraint levels on textile and apparel products not currently covered by restraints under the MFA, but which are brought under control as imports increase to the point of causing disruption to the U.S. market.

The inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the level of informal entry is expanded. Aggregate import levels could become increasingly understated if shipments under $1,500 are not included in Census data.

Because many textile and apparel items are of low-unit value, large quantities can be shipped under a $1,500 informal entry ceiling.

An increase in the informal entry ceiling would exacerbate the problem of undervaluation by exporters in order to avoid being subject to restraint levels.

STATEMENT

The American Fiber, Textile, Apparel Coalition (AFTAC) is a national coalition of labor and management organizations in the U.S. textile and apparel industry. The 20 member organizations of AFTAC listed on the cover page of this statement are located throughout the United States and produce most of the textiles and apparel made in this country.

We are in opposition to H.R. 4178 in its present form.

Textile and apparel products should be excluded from any proposal to increase the informal entry ceiling in order to ensure the effective operation of the multifiber arrangement to prevent further fraud and abuse in U.S. textile import trade.

The textile and apparel industry is still the largest employer in manufacturing in the United States although employment in the textile industry is now 1,978,000 [2]—about 150,000 below 1980 levels and 350,000 below employment in 1974. If the present import trend continues, estimates show that industry employment will decline further by 300,000 workers by 1990. Over 65 percent of the workers in the industry are women and, since many of them are secondary wage earners, many are unable to relocate. Furthermore, one-fourth of the industry's workforce is comprised of minorities and much of the apparel industry is concentrated in large U.S. cities and metropolitan areas where alternative employment opportunities are limited.

Many segments of this industrial complex, particularly in the apparel area, have been characterized by plant shutdowns, declining domestic production, and declining domestic employment, all as a result of increasing quantities of imports. The manufacture of apparel is highly labor intensive. Domestic apparel producers find it difficult to compete with foreign producers, especially those in low wage, developing countries. The industry therefore relies upon the Multifiber Arrangement (MFA) to alleviate import pressure on the textile and apparel industries.

The MFA requires a sophisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. The procedure for monitoring imports requires precise customs documen-

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Knitwear Manufacturers Association; National Wool Growers Association; Neckwear Association of America; Northern Textile Association; Textile Distributors Association; Work Glove Manufacturers Association; and Industrial Fabrics Association International.

[2] March 1984 preliminary employment estimates, U.S. Department of Labor.

tation as to the kinds, quantity, and value of imported articles. Even under current statutes, however, some apparel items from some countries, despite inclusion in the MFA, can be imported into the United States under informal entry procedures if the total value of the shipment does not exceed $250. This results in an already indeterminate number of apparel imports which do not get charged against negotiated quotas due to informal entry.

An increase in the maximum informal entry level would result in a considerably larger number of import shipments which would not be counted against negotiated MFA levels. This would not only hinder the operation of the MFA, but would also injure the industry's ability to monitor its competitive position in the U.S. market. Accurate trade data are a major priority for all import-sensitive industries in their efforts to analyze the economic impact of imports on the domestic market. Many individual textile and apparel industry segments, especially those in which high-volume, low-unit value imports are common, would be adversely affected by an increased dollar value limit for items eligible for informal entry.

Accurate trade data are also tremendously important to set restraint levels on textile and apparel products not presently covered by restraints under the MFA but which are brought under control as imports increase to the point of causing disruption to the U.S. market. When such actions are taken, import levels are set based on imports in the first twelve of the last fourteen months. Import data must fully reflect import levels in order that restraint levels are properly set.

Fair and equitable administration of the MFA depends upon accurate trade data. An increase in the maximum value of merchandise eligible for informal entry will make proper and effective administration of this import program exceedingly difficult.

Many imported items affecting the textile and apparel industry have relatively low average unit values. This is becoming an even greater problem today as the People's Republic of China, which has textile and apparel products with particularly low unit values, increases its shipments to the U.S. The inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the level of informal entry is expanded.

If a new ceiling were to be enacted for textiles and apparel there would be increasing incidents of import document irregularities, such as misclassification and undervaluations. These are problems which are already plaguing the domestic textile and apparel industries. Such practices are so rampant that some import specialists estimate that 1 out of every 15 (entries) involves some violations (see attached New York Times article, January 16, 1984.)

Also attached to our statement is an article from a Hong Kong publication which describes the action taken by the U.S. Customs Service in Hong Kong when it determined that made-to-measure clothing shipped to the U.S. was being undervalued to avoid being subject to the restraint levels on exports from Hong Kong. The U.S. Customs Service reported that this practice had also resulted in a loss of duty revenue to the U.S. of $300,000 to $500,000 *monthly*. If the informal entry level is raised, the Hong Kong merchants would have an even greater incentive to cheat.

There are many examples of imported textile and apparel items which are of low unit value and which therefore could take advantage of informal entry procedures. For example, the average unit value of imports of men's and boys' cotton shirts from the PRC in 1982 was $22.89 per dozen, less than $1 each. Currently, 132 of these shirts can enter the United States under the $250 informal entry ceiling. If the ceiling is raised, for example to $1,500, a shipment of 792 shirts can pass through U.S. Customs without being logged for statistical purposes. Shipments such as these would go uncounted if a higher ceiling is enacted for textile and apparel items. Unrecorded imports could increase the disruption to the U.S. market without recourse by the U.S. Government.

We understand that Congressman McKinney, the sponsor of legislation, H.R. 4178, to increase the informal entry ceiling, has agreed to conform his bill to the so-called Matsunaga compromise, which was adopted late last year by the Senate Finance Committee and is now Section 205 of H.R. 3398. We support the language in Section 205, as opposed to the language in H.R. 4178, because Section 205 requires no further administrative determination as to what constitutes a "textile good or product" as would be the case with H.R. 4178. We also recommend the addition of a clarifying amendment to the Matsunaga compromise which makes clear the Census Bureau's responsibilities to report all import data on formal entries for the exempted industries in the Matsunaga compromise without regard to whether such entries are valued at between $251 and $1,000, or over $1,000. As we understand it, this clarification is necessary because officials at Census, in anticipation of favorable Congressional action on Section 205 of H.R. 3398, are making plans to raise from

$251 to $1,000 the threshold for entries which Census will publish in its regularly published import statistical series. For the anticipated exempted products, Census intends to tabulate separately entries between $251 and $1,000 and provide such data in supplemental publications or tapes. Such a proposal, if implemented, would prove a nightmare for our industry which must keep track on a timely basis of literally thousands of separate TSUSA items. With respect to others who use this data for trade cases or for other purposes, such an arrangement will cause enormous confusion. We also believe that the Census plan runs counter to the intent of the Matsunaga compromise which was adopted by the Senate Finance Committee on the basis that such statistical data should be readily available to our industry because of our problems with imports and because of the special statistical requirements of the Multifiber Arrangement.

If the Committee decides to move forward with a revised version of the bill H.R. 4178, we hope it will pattern its changes after the Matsunaga compromise (Section 205 of H.R. 3398) and include language along the lines of the attached draft revision of Section 205. The language we suggest is underlined and reads: "All data on formal entries for the items referred to in subsection (a)(2) shall be published by the Census Bureau in all of their regular statistical series for General Imports and Imports for Consumption, by TSUSA item, without regard to whether such entries are valued at between $251-$1,000, or over $1,000."

[Attachment]

SEC. 205. INCREASE IN AMOUNT FOR INFORMAL ENTRY OF GOODS

(a) Paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498) is amended—

(1) by striking out "$250" and inserting in lieu thereof "$1,000"; and

(2) by inserting before the semicolon at the end thereof: ", except that this paragraph does not apply to articles valued in excess of $250 classified in—

"(A) schedule 3,

"(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

"(C) parts 2 and 3 of the Appendix, of the Tariff Schedules of the United States, or to any other article for which formal entry is required without regard to value".

(b) *All data on formal entries for the items referred to in subsection (a)(2) shall be published by the Census Bureau in all of their regular statistical series for General Imports and Imports for Consumption, by TSUSA item, without regard to whether such entries are valued at between $251-$1,000, or over $1,000.*

(c) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of the enactment of this Act.

[From the New York Times, Jan. 16, 1984]

CUSTOMS SERVICE GIVES TEXTILES A TWICE-OVER

(By Seth Mydans)

In the world of smuggling these days, fashion is the fashion.

Recent trophies among customs inspectors include 100,000 counterfeit Lacoste alligator emblems, 759 cartons of fake Jordache jeans and $17 million worth of Taiwanese shorts-and-shirts sets slipping into the country under quotas for swimwear.

"These are multimillion-dollar shipments," Edward Kellmer, a United States Customs agent, said. "It's better than smuggling diamonds."

With the increasingly complicated import regulations that have been put in force in recent years to protect American textiles and other industries, counterfeiting and customs fraud have become big business, reaching as high as $16 billion a year, according to the Customs Service.

The alligator emblems, jeans and shorts sets are all trophies of the agents' work, but they are also indicators of the amount of counterfeit goods that continue to enter the country undetected.

TEXTILE-FRAUD TASK FORCE

To try to tighten enforcement of import regulations, the Customs Service created a New York task force in October to coordinate detection of textile fraud. Patrick T. O'Brien, assistant regional commissioner for enforcement, said the task force had already seized textile products worth $3.1 million.

The task force, part of an antifraud program called Operation Tripwire, is composed of a dozen specialists who coordinate the detection forces at Kennedy International Airport and the ports of New York and New Jersey.

Their methods range from close analysis of import documents to laboratory analysis of textiles to tracing tips from employees of import concerns.

In their work, the agents develop a wary respect for adversaries who have become as expert in the shifting minutiae of textile-import laws as they are.

"I think there's a mutual admiration society," said Frank J. Carroll, the Customs Service's New York regional program manager for fraud investigations. "I think if something is particularly well hidden, there's a certain respect."

'MOST SOPHISTICATED SMUGGLER'

"This is probably the most sophisticated smuggler there is," said Mr. Kellmer. "They're college educated. They're world travelers. They're pillars of their community. And when they're nailed, they're shocked."

The first line of defense against the textile smugglers is where it has always been for the Customs Service, at the dockside.

The dockside itself has changed, though. And as Supervisory Inspector Lynn Pelletier clambered into the back of a large metal shipping container with a flashlight on a recent inspection, only the faint smell of curry from a stack of sealed crates served as a reminder that the spices and silks of the world still pass through the ports of New York City.

Around her at Port Newark, which has replaced Manhattan and Brooklyn as New York City's main seaport, were acres of identical containers that gave no hint of their contents.

"You look across there and you just wonder," said Mr. Carroll as he looked on. He said an inspector, whether working the conveyor belts at Kennedy Airport or the containers at Newark, continually asked himself, "Should I have looked farther?"

Of the containers chosen for scrutiny by import specialists who study their documentation, he said, 1 in 15 involves some violation. "It's nice to see your suspicions confirmed," he said.

This time Miss Pelletier was quite sure she was on to something. The container she was inspecting was one of three from China containing clothing. The documents described the clothing as just under 50 percent cotton and just over 50 percent, or chief-weight, ramie, a hemp fiber.

Miss Pelletier knew that China had already filled its 1983 quota for cotton exports to the United States, and that it was uncommon for clothing to be chief-weight ramie rather than chief-weight cotton.

She also knew that the three containers, worth $400,000, could bring $1.25 million on the American market if she let them through.

Miss Pelletier pulled out several pairs of fashionably pleated gray shorts with a subtle purple stripe and sent them to the Customs Service's laboratory in the World Trade Center for analysis.

DYES AND MICROSCOPES

In the laboratory, Martin Youngberg, a textile chemist, had the shorts dyed to heighten the differences in the fibers and examined under a polarized-light microscope.

If necessary, the laboratory could have run the shorts through other tests, peering at them in an ultraviolet light box or slicing them into small pieces that could be ground into dust and poured into a chemical solution.

The microscopic examination was enough to show the shorts were, as Miss Pelletier had suspected, chief-weight cotton, and the case of the gray-and-purple Chinese shorts was sent to investigators to determine whether criminal charges could be brought. The shipment was seized by the Customs Service, and a penalty will be assessed on the importer.

The textile quotas, which have grown increasingly complex in recent years as the United States has sought to protect its industry from inexpensive imports, have created a whole new area of expertise both for customs agents and smugglers.

Following the quota allotments from month to month, for example, importers may shift their shorts sets from the children's wear category to the more readily available, but inapplicable, swimwear category.

Or they may ship cotton garments from China, where the quota is filled, through Jakarta, where "Made in Indonesia" labels are sewn on.

They may attach cheap fur collars to down-filled coats and try to bring them in under the fur-import quota.

Or they may simply counterfeit name-brand goods like Lacoste or Jordache, cutting corners on quality but imitating them so skillfully that even the manufacturer can hardly tell the difference.

"The profits are phenomenal and justify the risk," Mr. Kellmer said. "Some designer jeans when they hit the dock are worth $8, and in the stores they go for $60."

At the Newark investigating offices of the Customs Service, copies of a cartoon are tacked up on walls throughout the building. It shows two convicts talking in a jail cell. "Twenty-dollar bills don't pay," says one. "What I counterfeited was where the big money is: jeans."

[From Textile Asia, June 1982]

CUSTOMS CRACKDOWN

An investigation by the US Customs, which in January–April seized some 8,000 parcels of custom-made clothing despatched from Hong Kong, has led to the imposition of stringent new conditions on such sales. A directive dated April 30 and signed by Mr. Donald Mieger, senior US Customs representative in Hong Kong, specifies that:

All future shipments must be declared at full transaction value, i.e. the price to the US customer.

They must contain a copy of the original invoice or order form, and proof of payment.

All books and records concerning sales to the US must be available for inspection on demand.

All parcels must be properly declared as regards fibre content, and contain proper quota and visa documentations.

Urging tailors, shippers and mail order companies to use their "influence" to ensure the widest possible conformity with these guidelines, the directive states that firms which fail to follow them "and which continue to falsify values and provide inaccurate information regarding fabric content will have their parcels seized, and may face criminal action by US Customs. Action will also be taken against firms that refuse to pay the assessed benefits."

Mr. Tom Gray, a US Customs official who has been leading the investigation in Hong Kong, says that at a conservative estimate 85% of the parcels of made-to-measure clothing shipped from Hong Kong had been undervalued, so as to save duty or evade quota requirements. Goods valued at US$250 and over are subject to quotas.

According to Mr. Gray, the present widespread abuse derives from a new policy introduced in July 1980, by which goods are assessed for duty on transaction value—the price paid—as against the former assessment based on "constructed value," which covered the tailor's material costs plus wholesale profit of about 20%. But as made-to-measure goods are marked up by 60–80%, many people had continued to value under the old system.

False description might also be used in an attempt to evade duty. E.g. all-cotton shirts attract an 8–16% duty, as against 27% for shirts of cotton-synthetic blends. Articles bearing logos pay up to 40%.

The degree of abuse came to light after complaints were made against one company in America. The present loss of duty revenue was estimated at US$300,000–500,000 monthly. About 50% of the volume of the present trade was generated by mail-order firms, with the rest stemming from various retail outlets.

The directive adds that if the guidelines are "accepted and followed" parcels valued at under $250 now being held by US Customs at Seattle and San Francisco, the two main points of entry, will be released immediately, with duty assessed at true value. Those valued over $250 will be assessed at a rate of eight times the potential loss of revenue, levied against each parcel individually and with the "tailor and consignee identified." For these however the US Commerce Department will request "blanket quota waivers."

"We do not," says the directive, contemplate petitions or mitigations of these penalties as a general rule. Violators are expected to pay in full."

F.W. MYERS & CO., INC.,
Rouses Point, NY, April 27, 1984.

COMMITTEE ON WAYS AND MEANS,
House of Representatives, Longworth House Office Building, Washington, DC.
(Attention: Mr. John J. Salmon, Chief Counsel.)

DEAR SIR: We strongly oppose this proposed rulemaking by Mr. McKinney to amend the Tariff Act of 1930, increasing from $250 to $1,500 the value of goods eligible for informal entry and for other purposes. On January 22, 1981 Mr. Matsunaga introduced Bill S. 231 to amend the Tariff Act of 1930 to increase from $250 to $600, amount for informal entry of goods and there was a proposed rulemaking in the Federal Register of December 21, 1983 giving District Directors authority to waive the necessity of having surety for commercial importations valued under $1000.

A copy of my comments opposing such legislation is enclosed herewith for your perusal. It appears the value increases with every bill introduced and now Mr. McKinney's Bill H.R. 4178 permits shipments valued in excess of 3 billion dollars be imported on an informal basis. Additionally, there are numerous informal entry test procedures being implemented, and consideration should be given not to implement additional changes at this time.

We certainly are in complete agreement with Mr. Conable's Bill H.R. 5448 to provide duty-free treatment of articles previously imported with respect to which duty was previously paid, and also Mr. Gibbons and Mr. Frenzel's H.R. 5453 to authorize the President to proclaim modifications in the rates of duty for certain articles in trade in civil aircraft.

Very truly yours,

RODNEY L. WRIGHT,
Vice President Customs Brokerage.

Enclosure.

F.W. MYERS & CO., INC.,
Rouses Point, NY, February 4, 1984.

COMMISSIONER OF CUSTOMS,
U.S. Customs Service, Constitution Avenue NW., Washington, DC.

Attention: Regulations Control Branch.
Subject: Amendments Relating to Acceptance of Formal Entries with Unsecured Bonds.

DEAR SIR: We strongly oppose this proposed rulemaking. It is historic, on the Canadian Border under ID procedures, the ID permit is filed by the broker under his bond for the release of the merchandise. The broker is obligated for a timely follow up entry summary, paying estimated duties. Because of this, we attempt to release merchandise on the importer's bond.

The waiver would not apply to quota merchandise, any type of merchandise that cannot be easily appraised or classified or any type of merchandise where there may be a question of redelivery. The U.S. Customs Inspection and Control personnel do not have the expertise to appraise or classify merchandise or knowledge of questionable importations. In most instances it would only be after entry summary is filed where determination could intelligently be made to justify release of merchandise valued at $1000 or less without a surety bond. There would be a strong temptation for unscrupulous importers to break up their shipments, misclassify and thus evade duty.

There is an excess of 200,000 informal entries accounted for which would mean importations valued in excess of 2 billion dollars that would not be protected by surety bonds. Statistics on imported commodities would be askewed by not including such a volume of informal entries. Under the present program for ID releases, i.e., The Accept Program, Quickline Releases, etc., a system would have to be implemented to establish surety requirements at time of entry and not at time of filing entry summary.

Elimination of surety bonds for certain importers or certain commodities would be discriminatory. This leads to delays in customs clearance, demurrage charges would be incurred creating additional expense for importers. This results in higher landed costs of the goods imported and, eventually, would be passed on to the ultimate consumer.

The customs broker and sureties provide an invaluable service both to the importer and the U.S. Customs Service. We feel more comfortable with the surety bond system as it now exists and would not be in favor of the proposed changes.

Very truly yours,

RODNEY L. WRIGHT,
Vice President Customs Brokerage.

STATEMENT OF WILBUR DANIELS, EXECUTIVE VICE PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

This submission is made on behalf of the International Ladies' Garment Workers' Union, AFL-CIO (hereafter referred to as the ILGWU) and its 270,000 members engaged in the production of various articles of women's and children's apparel and accessories.

Over the last 25 years, an unrelenting rise in clothing imports has devastated the domestic industry. Where once (1957), 4 garments out of every 100 sold in the United States were imported, today about 50 are imported for every 100 sold here. The result has been a steady decline in the number of garment firms in the United States and a decline of some 300,000 jobs since peak employment in our industry was reached in 1973. The legislation in question, H.R. 4178, would further aggravate an already disastrous situation and it is for this reason that we oppose it. Detailed comments follow:

The existing law sets $250 as the maximum aggregate value of a shipment which may be entered through informal entry procedures in accordance with rules prescribed by the Secretary of the Treasury. H.R. 478 would raise this amount to $1,500.

Informal entries are just that. Shippers are not required to file detailed declarations identifying the merchandise involved. While the amendment would ostensibly reduce paperwork and improve efficiency, it would also permit a large quantity of low-value merchandise to enter the country without accurate reporting. For example, in February 1984 the average value of brassieres imported from the Philippine Republic under TSUSA 376.2830 was 74 cents per brassiere. Were the ceiling on informal entries raised to $1,500, over 2,000 such brassieres per shipment could be brought into the United States subject to informal entry. This is not a small shipment by any definition.

Increasing the informal entry limit to $1,500 could seriously impair the nation's ability to enforce the various bilateral textile and apparel agreements negotiated under the umbrella of the Multifiber Textile Agreement. Enforcement requires careful identification of imported articles so that may be correctly charged to the various quotas.

In the absence of the verification procedures used in formal entry, the door would be open to all kinds of error and misrepresentation. Even under formal entry procedures, attempts are repeatedly made to undercount, undervalue or misrepresent the type of article or country of origin. With extended informal dollar entry amounts, the chances for wrongdoing are multiplied. To permit proper enforcement of the textile and clothing bilaterals and prevent erosion of the domestic industry by unscrupulous shippers trying to avoid quotas, this bill should be rejected.

STATEMENT OF THE LEATHER PRODUCTS COALITION

SUMMARY

The Leather Products Coalition opposes in its current form H.R. 4178, a bill to increase the ceiling on informal entries from $250 to $1,500 because such an increase would result in statistical discrepancies with respect to import data, and thus make import monitoring more difficult.

The leather products industries are susceptible to large volumes of low-valued imports. Indeed, in 1982, 13.7 percent of all leather-related product entries were valued between $251 and $1,000, and another 9.5 percent were valued between $1,001 and $2,000.

Increasing the informal entry ceiling to $1,500 would exacerbate the already rampant practice of under-valuation of shipments and misclassification of articles in order to escape payment of proper duty rates.

It is precisely because these industries—luggage and flat goods, work gloves, handbags, footwear and leather wearing apparel—are so import sensitive that they rely so heavily on accurate trade data. Import penetration rates for these industries range from 35 to 85 percent. Such data are vital with respect to Trade Act filings and to monitor accurately the impact of trade flows on the domestic market.

If the Subcommittee decides to move forward with legislation to increase the informal entry ceiling, we urge the Subcommittee to adopt the Matsunaga compromise embodied in Section 205 of H.R. 3398 which has been approved by the Senate Finance Committee. Section 205 exempts leather-related products, and textiles and apparel from an increase in the informal entry ceiling. We understand that the sponsor of H.R. 4178 agrees with this approach. Should the Subcommittee adopt the provisions of Section 205 of H.R. 3398, a further amendment should be added to make clear the Census Bureau's responsibilities with respect to publishing all data for formal entries in their regular published statistical series. We believe this is essential because of plans of the Census Bureau to publish data on entries of the excluded products separately, an action which would cause confusion and lead to unnecessary difficulties in evaluating import data and their trends.

STATEMENT

The Leather Products Coalition membership consists of the following organizations:

Amalgamated Clothing and Textile Workers Union, AFL-CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics and Novelty Workers' Union, AFL-CIO; Luggage and Leather Goods Manufacturers of America, Inc.; United Food and Commercial Workers Union, AFL-CIO; and Work Glove Manufacturers Association.

The leather products sector includes such products as work gloves; nonrubber footwear; luggage; personal leather goods; handbags; and leather wearing apparel.

The Leather Products Coalition is opposed to H.R. 4178, a bill which would increase the ceiling on informal entries from $250 to $1,500 in its present form. Raising the ceiling on informal entries would result in statistical discrepancies with respect to import data on the leather-related industries, and thus make monitoring of imports more difficult.

It is useful to examine briefly how informal entry procedures affect the Government's counting of imports. Goods which are imported under informal entries go unrecorded in the official TSUSA commodity by country statistics maintained by the U.S. Bureau of Census. These statistics are vital to any industry concerned about imports and the impact of imports on their industry and market. Even under the present ceiling of $250, imports entering under informal entry procedures are not counted in the relevant trade statistics by commodity. No quantity data are provided. Census merely estimates the approximate value of total import shipments of all items valued at $250 or less for inclusion in a single, basket commodity classification by country of origin. This basket category is TSUSA 999.9500 ("under 251 formal and informal entries estimated"); in 1982 the value of U.S. imports in TSUSA 999.9500 was $339.5 million, and the total number of informal entries was 26,713. Any shipments of imported goods valued at under $250, such as, for example, shoes, do not get included in the import statistics on shoes but would merely be counted in USUSA 999.9500. The first attachment to my testimony contains a page from the Bureau of Census Publication FT 246 which illustrates this point. These data are absolutely useless in determining the articles, their value, or their quantity contained therein.

In 1982, 13.7 percent of all leather-related product entries were valued between $251 and $1,000; an additional 9.5 percent of all leather-related product entries were valued between $1,001 and $2,000. Taken together this includes over 44 percent of the entries of flat goods, 39 percent of the entries of leather apparel, 35 percent of the entries of handbags, 29 percent of the entries of luggage, almost 17 percent of the entries of nonrubber footwear, and over 12 percent of the entries of work gloves. In all, some 38,000 entries of these products in 1982 were valued between $251 and $1,000 and over 26,000 additional entries of these products were valued between $1,001 and $2,000. (See attached Table 1 and 2.)

Census has estimated that increasing the informal entry ceiling just to $1,000 would result in a 22 percent reduction in the number of import records processed for total imports. Such a substantial reduction is likely to have significant ramifications in statistical reporting in certain commodities, particularly low-unit value items such as textiles and apparel, and leather-related products. Certainly, for these leather-related products, there would be a substantial loss in import records processed.

It is worth noting that the U.S. Customs Service and the Census Bureau have different criteria for considering a shipment to be an informal entry. Census' definition is the one which ultimately affects whether or not an entry gets counted with the relevant commodity statistics or in the basket category for informal entries. Census' view of informal entries presents a major problem insofar as these industries are concerned. The following example is illustrative:

1. Assume that the ceiling for informal entries is $1,500. A shipment of shoes arrives in the United States with a total value of $2,300. This shipment, however, is composed of three different types of shoes falling into three different TSUSA items. One of the TSUSA items (for example, men's leather athletic shoes, TSUSA 700.3515) is valued at $900; one (for example, men's leather work shoes, TSUSA 700.3527) is valued at $700; and one (for example, women's leather athletic shoes, TSUSA 700.4506) is valued at $700.
2. Customs would process this shipment as a formal entry because the total value of the shipment at $2,300 is in excess of $1,500.
3. Census, on the other hand, would consider each of the three items as informal entries because the value of the different TSUSA items is $1,500 or less. Census would not report statistics on each of the entries in the relevant import statistics on shoes. Thus, overall statistics on shoe imports would not contain this $2,300 shipment.

The industries in the leather products sector rely heavily on accurate trade statistics to monitor market conditions relating to imports and import penetration because these industries are all highly import-sensitive.

The unemployment rate in the leather products sector rose to 17.8 percent last year. And import penetration for every portion of the leather products sector is at extraordinarily high levels: The latest available data show import penetration for nonrubber footwear at 64 percent, luggage at 50 percent, personal leather goods at 35 percent, handbags at 85 percent, work gloves at 40–45 percent, and leather wearing apparel at 56 percent. As a result, imports need to be monitored closely and only the most precise and timely statistics can be relied upon to keep an accurate watch on import levels. With large numbers of low unit value items constantly being imported into the United States, an increase in the dollar amount of merchandise eligible for informal entry could undermine the efforts of government and industry to monitor accurately what is coming in and where it is coming from.

For example, the personal leather goods industry has been carefully monitoring imports of nylon flat goods (TSUSA 706.3900). In 1982, the average unit value of U.S. imports of nylon flat goods was 76¢. At the current informal entry ceiling of $250, a shipment of about 330 of these items could go unrecorded in import statistics. Raise the level to $1,500 and some 1,980 number of these flat goods could go uncounted! Shipments of high-volume, low-unit value items could combine to cause substantial undercounting in Census data.

Perhaps most disturbing is the potential of deliberate under-valuation of items in order to qualify for informal entry and/or misclassification of items in order to evade duty payments. This is clearly not in the public interest. And these problems will be exacerbated if the value of the shipments eligible for informal entry procedures is allowed to increase. Not only will under-valuation in general be a problem, but the problem of deliberate misclassification of certain products in order to evade payment of proper duty rates on these items will likely increase. For example, duties on nonrubber footwear vary from 0 to 20 percent and, on luggage, from 6.5 percent to 20 percent. It will be easy for importers to claim the lower duty rates, particularly since informal entry shipments are not subject to a Customs specialist's scrutiny. One can only speculate on how much revenue will be lost to the Federal Treasury if the ceiling on informal entries is increased six-fold as proposed in H.R. 4178.

It is precisely because these industries are so import sensitive that they require the most accurate data available on imports. Such data are utilized by firms and workers in a number of ways, but most often to portray import penetration levels accurately in any trade action or complaint filed by a U.S. industry, ranging from GSP matters to Section 201 or 301 filings under the Trade Act. Such statistics also play a part in establishing eligibility for industry-wide adjustment programs administered and funded by the Department of Commerce. Such statistics are equally important to the Executive Branch.

We strongly oppose an increase in the informal entry ceiling for leather-related industries for the aforementioned reasons. These industries and their workers are suffering enormously at the hands of imports. To disrupt and camouflage the data on which these industries so heavily rely would be to add an additional burden which simply cannot be justified at this time.

Therefore, the Leather Products Coalition opposes H.R. 4178 in its current form. However, we understand that Congressman McKinney has indicated an interest in conforming his bill to Section 205 of H.R. 3398 which has been approved by the Senate Finance Committee and is awaiting Senate floor consideration. Section 205 exempts leather-related products, and textiles and apparel from an increase (from $250 to $1,000) in the informal entry ceiling.

If this Subcommittee decides to move forward with legislation to increase the informal entry ceiling, we urge the Subcommittee to accept the language in Section 205 of H.R. 3398; however, we believe the language must be further amended to make clear the Census Bureau's responsibilities with respect to publishing all data for formal entries, together, in Census' regular published statistical series.

This clarifying amendment is absolutely necessary because Census, in anticipation of favorable Congressional action on Section 205 of H.R. 3398, plans to place import data on shipments above $1,000 for the Section 205-exempted industries in the regular published statistical series, and place import data on shipments between $251 and $1,000 in a separate series. This would necessitate adding data for many Tariff Schedule items from two series of data, a time-consuming operation which is needless if the data were published in one series as has been traditionally the case with Census import data.

The leather products industries are already heavily import-impacted and can ill-afford the additional time and cost of compiling still more data from separate statistical series. These industries are already overwhelmed by their current statistical needs and this Census plan would not only add to that burden, but would also cause confusion among all parties that utilize such data. If the Subcommittee moves ahead with the Matsunaga compromise, we recommend that the following language be adopted.

All data on formal entries for the items referred to in subsection (a)(2) shall be published by the Census Bureau in all of their regular statistical series for General Imports and Imports for Consumption, by TSUSA item, without regard to whether such entries are valued at between $251-$1,000, or over $1,000.

Attachments.

SEC. 205. INCREASE IN AMOUNT FOR INFORMAL ENTRY OF GOODS

(a) Paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498) is amended—

(1) by striking out "$250" and inserting in lieu thereof "$1,000"; and

(2) by inserting before the semicolon at the end thereof: ", except that this paragraph does not apply to articles valued in excess of $250 classified in—

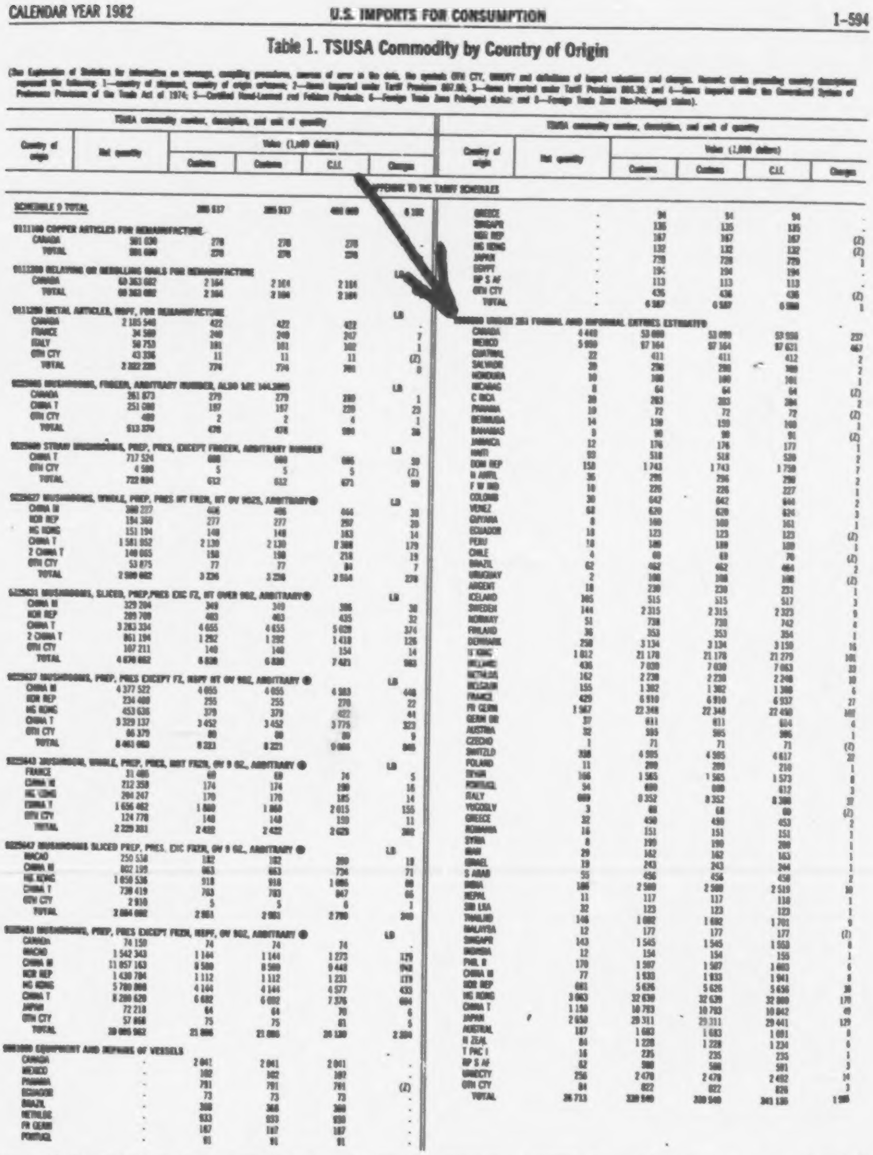
"(A) schedule 3,

"(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

"(C) parts 2 and 3 of the Appendix, of the Tariff Schedules of the United States, or to any other article for which formal entry is required without regard to value".

(b) *All data on formal entries for the items referred to in subsection (a)(2) shall be published by the Census Bureau in all of their regular statistical series for General Imports and Imports for Consumption, by TSUSA item, without regard to whether such entries are valued at between $251-$1,000, or over $1,000.*

(c) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of the enactment of this Act.



CALENDAR YEAR 1982 U.S. IMPORTS FOR CONSUMPTION 1-594

Table 1. TSUSA Commodity by Country of Origin

Source: U.S. Imports For Consumption And General Imports, TSUSA Commodity by Country of Origin, U.S. Department of Commerce, Bureau of the Census, FT246/Annual 1982.

TABLE 1.—INFORMAL ENTRIES OF LEATHER-RELATED PRODUCTS VALUED BETWEEN $251–$1,000, AND BETWEEN $1,001–$2,000

	Total number of entries	Percent of entries valued between—	
		$251 to $1,000	$1,001 to $2,000
Nonrubber footwear	177,753	9.2	7.5
Handbags	37,183	22.0	13.1
Luggage	26,526	18.0	10.7
Flat goods	14,849	26.8	17.4
Leather apparel	17,994	25.4	13.4
Work gloves	3,308	5.4	6.9
Total	277,613	13.7	9.5

Source: Prepared by Economic Consulting Services Inc. from data compiled by the U.S. Census Bureau.

TABLE 2.—SUMMARY OF STATISTICAL INFORMATION RELATING TO INFORMAL ENTRY

[Quantity and value in thousands]

	Total imports (1982)			$251–$1,000			$1,001–$2,000	
	Count	Quantity	Value	Count	Quantity	Value	Count	Quantity
Nonrubber footwear	177,753	481,063	3,087,342	16,297	1,923	9,179	13,391	4,667
Handbags	37,183	192,129	418,298	8,169	2,270	4,581	4,867	3,328
Luggage	26,526	N/A	336,136	4,765	N/A	2,639	2,831	N/A
Flat goods	14,849	N/A	94,262	3,982	N/A	2,251	2,588	N/A
~~Leather apparel~~	17,994	6,699	251,862	4,570	60	2,524	2,403	85
Work gloves [1]	3,308	4,695	48,430	179	12	104	229	37
Total	277,613	N/A	4,236,330	37,962	N/A	21,278	26,309	N/A

[1] Includes leather and plastic or rubber work gloves.

N/A—Not available, or not applicable.

Source: Prepared by Economic Consulting Services Inc. from data compiled by the U.S. Census Bureau.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 17, 1984.

Hon. SAM M. GIBBONS,
Chairman, Subcommittee on Trade, Longworth House Office Building, Washington, DC.

DEAR SAM: I wish to respond to your invitation to submit testimony for the record concerning H.R. 4178, a bill to increase the value of goods eligible for informal entry. I introduced H.R. 4178 on October 20, 1983, whereupon it was referred to your Trade Subcommittee of the Committee on Ways and Means (see tab 5).

Mr. Chairman, I am pleased to report that since that time, the Senate Finance Committee has favorably reported H.R. 3398 which contains a similar provision that increases to $1,000 the value of goods eligible for informal entry (see tab 4). It is my understanding that during the consideration of H.R. 3398 by the Senate Finance Committee, groups initially opposed to the informal entry provision sought and received amendments which addressed their concerns. As a result, W. Ray Shockley (AFTAC), and Stanley Nehmer, on behalf of the Leather Products Coalition, expressed their support for the bill (see tab 3). It is my hope that adoption of similar amendments by your distinguished subcommittee will resolve any and all differences over this matter. I support the amendments adopted by the Senate and do not expect any controversy with regard to the amended version of this bill.

This bill increases the value of goods eligible for informal customs entry into the United States. As you know, informal entry allows the consignees of goods without the extensive paperwork and lengthy delay otherwise required. Since 1953, the value limit on informal entry was $250. Although inflation has reduced the value of the dollar to about one quarter of what it was in 1963, no adjustment has been made in the informal entry limit. As a result, goods that at one time qualified for informal entry must now go through more cumbersome procedures.

Mr. Chairman, this noncontroversial bill will relieve the hardships of inconvenience, delay and expense on small importers. It will also relieve any unnecessary burden on the U.S. Customs Service, which must deal with this complex and unnecessary bottleneck. I urge the Subcommittee to adopt this measure in order to relieve the burdens and delays which now exist.

Sincerely,

STEWART B. MCKINNEY, M.C.

Enclosures.

98TH CONGRESS
1ST SESSION

S. 1184

To amend the Tariff Act of 1930 to increase from $250 to $1,000 amount for informal entry of goods.

IN THE SENATE OF THE UNITED STATES

APRIL 28 (legislative day, APRIL 26), 1983

Mr. MATSUNAGA introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Tariff Act of 1930 to increase from $250 to $1,000 amount for informal entry of goods.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498) is amended by striking out "$250" and inserting in lieu thereof "$1,000".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date of enactment of this Act.

[Tab 2]

BEFORE THE COMMITTEE ON FINANCE, U.S. SENATE

COMMENTS OF THE AIR FREIGHT ASSOCIATION, STEPHEN A. ALTERMAN, EXECUTIVE VICE PRESIDENT AND COUNSEL

SUMMARY OF POSITION

AIR FREIGHT ASSOCIATION

The Air Freight Association strongly supports enactment of S. 1184, a Bill to increase the informal customs entry limit from $250 to $1,000.

The current $250 limit was enacted in 1953 and has not been adjusted to take into account the inflation of the past 30 years.

The artificial $250 limit imposed a severe hardship on small importers who are forced to endure inconvenience, delay and expense in the customs clearing procedure for relatively inexpensive shipments.

Enactment of S. 1184 will relieve an unnecessary burden on an understaffed and overworked U.S. Customs Service.

To the extent that S. 1184 is opposed by members of the U.S. Textile Industry, the Air Freight Association is not opposed to an exemption from the proposed $1,000 limit to accommodate this hard-pressed segment of U.S. business.

BEFORE THE U.S. SENATE COMMITTEE ON FINANCE

COMMENTS OF THE AIR FREIGHT ASSOCIATION, STEPHEN A. ALTERMAN, EXECUTIVE VICE PRESIDENT AND COUNSEL

Good Morning. My name is Stephen A. Alterman and I am Executive Vice President and Counsel for the Air Freight Association. The Association is a nationwide trade organization which represents a large segment of the air cargo industry. Our members include airlines, air freight forwarders, and companies which provide both services to the U.S. shipping public. A list of AFA members is attached hereto as Exhibit I.

Most of the members of the air freight industry operate internationally as well as domestically and are therefore vitally interested in any legislation designed to ease the customs entry process. S. 1184 is one such piece of legislation. At a time when budget cuts and an ever increasing number of imports threaten to swamp the U.S. Customs Service with more work than it can efficiently handle, any move to simplify customs procedures must be viewed as a positive step. Such legislation now sits before this committee and should be expeditiously approved. Introduced by Senator Spark Matsunaga of Hawaii, Senate Bill S. 1184 would amend the Tariff Act of 1930 to increase from $250.00 to $1,000.00 the amount allowed for informal entry of commercial goods.

Under the provisions of informal entry, the consignee is permitted to pay duties and obtain imported goods whose value does not exceed the legal limit at airport customs stations at the time of their arrival. In turn, reduced paperwork and lower brokerage fees (which can amount to as much as 50% less, if a broker is used) make informal entry a particular asset to small businesses. The inability to use this procedure on shipments with a value of over $250.00 creates an artificial, government-imposed, restriction on international trade and creates unfair and unwarranted burdens on customs personnel who are currently past the limits of their efficient capabilities.

When originally signed into law as the nation's basic customs legislation, the Tariff Act of 1930 provided for a $100.00 value limit for informal entry of commercial merchandise into the United States. This amount was increased to $250.00 in 1953 and has remained there ever since, notwithstanding the fact that significant inflation has reduced the purchasing power of the dollar to approximately one-quarter of its 1953 value. Thus, precisely the same goods which once qualified for informal entry now must be treated as a formal entry, a much more cumbersome, time-consuming and expensive process. The net result of the use of the out-dated $250.00 limit, coupled with the inflation rate since 1953, has been to violate the clear intent of the customs laws. A new updated limit, is needed now to cure this inequitable situation.

In further support of S.1184, it should be noted that some of our major trading partners, Canada, for example, have higher informal entry limits. In addition, other individual supporters of a change in U.S. law will undoubtedly come from the growing international small package trade, as the value of the most small packages falls squarely within the $250.00 to $1,000.00 range. For example, Air Express International, one of the country's major international air freight forwarders, reports that it is currently handling approximately 10,000 shipments per month from the United States under it "Interpak", or door-to-door, service, but only 500 such shipments into the United States. The major reason for this imbalance is the current $250.00 informal customs entry limit.

Finally, perhaps the most telling argument in favor of the immediate passage of S.1184 is that we understand that the U.S. Customs Service itself is in firm support of this legislation. More informal entry results in less work for the harried agency, whose workforce is barely able to keep up with its required tasks. Therefore, the passage of S.1184 will prove to be as great a boom to the Customs Service as it will be business large and small throughout the country.

Finally, in the past, opposition to legislation similar to S.1184 has come from members of the textile industry who themselves are under severe pressure from foreign importers. Recognizing this problem, the Air Freight Association would not object to exempting the textile industry from the increased informal customs entry provisions.

In summary, because the intent of S.1184 is the facilitation of international trade and the improved efficiency of the U.S. Customs Service, the Air Freight Association strongly supports its passage as quickly as possible.

Thank you very much.

AFA MEMBERSHIP LIST

Air Express International; Airborne Freight Corporation; Airspeed, Inc.; Amerford International Corporation; Associated Air Freight; Burlington Northern Air Freight, Inc.; Cam Air International (formerly Fleming International Airlines); Combs Airways, Inc.; Emery Air Freight; Evergreen International Airlines; Flying Tiger Line; General Aviation, Inc.; Imperial Air Freight; North American Van Lines; Pilot Air Freight; Profit Freight System; SMB Stage Line, Inc.; Southern Air Transport; Summit Airlines, Inc.; Surfair; Transamerica Airlines; and WTC Air Freight.

[Tab 3]

TESTIMONY OF LEATHER PRODUCTS COALITION

Amalgamated Clothing and Textile Workers Union, AFL–CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO; Luggage and Leather Goods Manufacturers of America, Inc.; United Food and Commercial Workers Union, AFL–CIO; and Work Glove Manufacturers Association.

PRESENTED BY STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES INC.

My name is Stanley Nehmer. I am President of Economic Consulting Services Inc. I am here today in my capacity as consultant to the leather products industries and as a representative of the Leather Products Coalition whose membership consists of the following organizations:

Amalgamated Clothing and Textile Workers Union, AFL–CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO; Luggage and Leather Goods Manufacturers of America, Inc.; United Food and Commercial Workers Union, AFL–CIO; and Work Glove Manufacturers Association.

The leather products sector includes such products as work gloves; nonrubber footwear; luggage; personal leather goods; handbags; and leather wearing apparel.

The Leather Products Coalition is strongly opposed to S. 1184, a bill which would increase the ceiling on informal entries from $250 to $1,000. Raising the ceiling on informal entries would result in statistical discrepancies with respect to import data, and thus make monitoring of imports more difficult.

I think it would be useful to examine briefly how informal entry procedures affect the Government's counting of imports. Goods which are imported under informal entries go unrecorded in the official TSUSA commodity by country statistics maintained by the U.S. Bureau of the Census. *These statistics are vital to any industry concerned about imports and the impact of imports on their industry and market.* Even under the present ceiling of $250, imports entering under informal entry procedures are not counted in the relevant trade statistics by commodity. Census merely estimates the approximate value of total import shipments valued at $250 or less for inclusion in a single, basket commodity classification by country of origin. This basket category is TSUSA 999.9500 ("under 251 formal and informal entries estimated"); in 1982 the value of U.S. imports in TSUSA 999.9500 was $395.5 million, and the total number of informal entries was 27,112. Any shipments of imported goods valued at under $250, such as, for example, shoes, do not get included in the import statistics on shoes but would merely be counted in TSUSA 999.9500. The first attachment to my testimony contains a page from the Bureau of the Census Publication FT 246 which illustrates this point. These data are absolutely useless in determining the articles, their value, or their quantity contained therein.

In 1982, 13.7 percent of all leather-related product entries were valued between $251 and $1,000. This includes almost 27 percent of the entries of flat goods, over 25 percent of the entries of leather apparel, 22 percent of the entries of handbags, and 18 percent of the entries of luggage, over 9 percent of the entries of nonrubber footwear, and over 5 percent of the entries of work gloves. In all, some 38,000 entries of these products in 1982 were valued between $251 and $1,000. See Tables 1 and 2 attached to my testimony.

Census has estimated that increasing the informal entry ceiling to $1,000 would result in a 22 percent reduction in the number of import records processed for total imports. Such a substantial reduction is likely to have significant ramifications in statistical reporting in certain commodities, particularly low-unit value items such as textiles and apparel, and leather-related products. Certainly, for these leather-related products, there would be a substantial loss in import records processed.

I think Subcommittee members would be most interested to learn, as I was, that the U.S. Customs Service and the Census Bureau have different criteria for considering a shipment to be an informal entry. Census' definition is the one which ultimately affects whether or not an entry gets counted with the relevant commodity statistics or in the basket category for informal entries. Census' view of informal entries presents a major problem insofar as these industries are concerned. The following example is illustrative:

1. Assume that the ceiling for informal entries is $1,000. A shipment of shoes arrives in the United States with a total value of $2,300. This shipment, however, is composed of three different types of shoes falling into three different TSUSA items. One of the TSUSA items (for example, men's leather athletic shoes, TSUSA 700.3515) is valued at $900; one (for example, men's leather work shoes, TSUSA 700.3527) is valued at $700; and one (for example, women's leather athletic shoes, TSUSA 700.4506) is valued at $700.

2. Customs would process this shipment as a *formal entry* because the total value of the shipment at $2,300 is in excess of $1,000.

3. Census, on the other hand, would consider each of the three items as *informal entries* because the value of the different TSUSA items is $1,000 or less. Census would *not* report statistics on each of the entries in the relevant import statistics on shoes. Thus, overall statistics on shoe imports would not contain this $2,300 shipment.

The industries in the leather products sector rely heavily on accurate trade statistics to monitor market conditions relating to imports and import penetration because these industries are all highly import-sensitive.

The unemployment rate in the leather products sector rose from 13.1 percent to 17.4 percent between 1981 and 1982 alone. And import penetration for the entire leather products sector is at extraordinarily high levels: The latest available data show import penetration for nonrubber footwear at 64 percent, luggage at 40 percent, personal leather goods at 30 percent, handbags at almost 85 percent, leather work gloves at 57 percent, and leather wearing apparel at 56 percent. As a result, imports need to be monitored closely and only the most precise and timely statistics can be relied upon to keep an accurate watch on import levels. With large numbers of low unit value items constantly being imported into the United States, an increase in the dollar amount of merchandise eligible for informal entry could undermine the efforts of government and industry to monitor accurately what is coming in and where it is coming from.

For example, the personal leather goods industry has been carefully monitoring imports of nylon flat goods (TSUSA 706.3900). In 1982, the average unit value of U.S. imports of nylon flat goods was 76¢. At the current informal entry ceiling of $250, a shipment of about 330 of these items could go unrecorded in import statistics. Raise the level to $1,000 and some 1,316 number of these flat goods could go uncounted! Shipments of high-volume, low-unit value items could combine to cause substantial undercounting in Census data.

Perhaps most disturbing is the potential of deliberate under-valuation of itmes in order to qualify for informal entry and/or misclassification of items in order to evade duty payments. This is clearly not in the public interest. And these problems will exacerbated if the value of shipments eligible for informal entry procedures is allowed to increase. Not only will under-valuation in general be a problem, but the problem of deliberate misclassification of certain products in order to evade payment of proper duty rates on these items will likely increase. For example, duties on nonrubber footwear vary from 0 to 20 percent and, on luggage, from 6.5 percent to 20 percent. It will be easy for importers to claim the lower duty rates, particularly since informal entry shipments are not subject to a Customs specialist's scrutiny. One can only speculate on how much revenue will be lost to the Federal Treasury if the ceiling on informal entries is increased four-fold as proposed in S. 1184.

There are other problems as well. It is not inconceivable that one or more of the leather-related products could be the subject of import relief at some time in the future, and such import relief might involve the imposition of temporary import restraints. If the informal entry ceiling is allowed to increase, how would the U.S. Government be able to effectively monitor imports, and thus the restraint arrangements?

Finally, we think that the proposal is poorly timed because it comes at a point when imports are flooding the U.S. market in record numbers—causing a record trade deficit which is expected to top $70 billion this year and $100 billion next year—and trade tensions, both internationally and domestically, are high. Additionally, the bill fails to recognize that it is precisely because these industries are so import sensitive that they require the most accurate data available on imports. Such data are utilized by firms and workers in a number of ways, but most often to portray import penetration levels accurately in any trade action or complaint filed by a U.S. industry, ranging from GSP matters to Section 201 or 301 filings under the Trade Act. Such statistics also play a part in establishing eligibility for industry-wide adjustment programs administered and funded by the Department of Commerce. Such statistics are equally important to the Executive Branch. To quote from a June 15, 1980 letter from the General Counsel of the Department of Commerce to the Chairman of the House Ways and Means Committee stating the Department's reasons for opposing an increase in the informal entry ceiling:

The Department believes that enactment of the bill also could adversely affect the development of import data essential to our trade negotiations where comparisons are made between U.S. import statistics and other countries' export statistics. It could also seriously affect the collecting of data necessary to assess the effects of imports on domestic industry (import impact data).

We strongly oppose an increase in the informal entry ceiling for the aforementioned reasons. These industries and their workers are suffering enormously at the hands of imports. To disrupt and camouflage the data on which these industries so heavily rely would be to add an additional burden which simply cannot be justified at this time.

We urge the Subcommittee and the full Committee not to report S. 1184 favorably.

TABLE 1.—INFORMAL ENTRIES OF LEATHER-RELATED PRODUCTS VALUED BETWEEN $251–$1,000

	Total number of entries	Percent of entries valued $251 to $1,000
Nonrubber footwear	177,753	9.2
Handbags	37,183	22.0
Luggage	26,526	18.0
Flat goods	14,849	26.8
Leather apparel	17,994	25.4
Work gloves	3,308	5.4
Total	277,613	13.7

TABLE 2.—SUMMARY OF STATISTICAL INFORMATION RELATING TO INFORMAL ENTRY

[Quantity and value in thousands]

	Total imports (1982)			$251–$1,000		
	Count	Quantity	Value	Count	Quantity	Value
Nonrubber footwear	177,753	481,063	$3,087,342	16,297	1,923	$9,179
Handbags	37,183	192,129	418,298	8,169	2,270	4,581
Luggage	26,526	NA	336,136	4,765	NA	2,639
Flat goods	14,849	NA	94,262	3,982	NA	2,251
Leather apparel	17,994	6,699	251,862	4,570	60	2,524
Work gloves [1]	3,308	4,695	48,430	179	12	104
Total	277,613	NA	4,236,330	37,962	NA	21,278

NA—Not available, or not applicable.

[1] Includes leather and plastic or rubber work gloves.

Source: Prepared by Economic Consulting Services Inc. from data compiled by the U.S. Census Bureau.

Table 1. TSUSA Commodity by Country of Origin

(See Explanation of Statistics for information on coverage, sampling procedures, sources of error in the data, the symbols OTH CTY, UNDENT and definitions of Customs, f.a.s., and c.i.f. values and import charges. Numbers under preceding country designations represent the following: 1—country of shipment, country of origin unknown; 2—items imported under Tariff Provision 807.00; 3—items imported under Tariff Provision 806.30; and 4—items imported under the Generalized System of Preferences Provisions of the Trade Act of 1974; 5—Certified Hand-Loomed and Folklore Products; 6—Foreign Trade Zone Privileged status; and 8—Foreign Trade Zone Non-Privileged status).

TSUSA commodity number, description, and unit of quantity

APPENDIX TO THE TARIFF SCHEDULES

Country of origin	Net quantity	Value (1,000 dollars) Customs	Value (1,000 dollars) F.a.s.	Value (1,000 dollars) C.i.f.	Value (1,000 dollars) Charges
SCHEDULE 9 TOTAL		302 574	303 116	304 700	2 204
[illegible] COPPER ARTICLES FOR REMANUFACTURE LB					
CANADA	165 082	100	100	100	-
PANAMA	108 955	75	75	82	7
OTH CTY	23 574	16	16	18	2
TOTAL	297 581	191	191	200	9
[illegible] RELAYING OR REROLLING RAILS FOR REMANUFACTURE LB					
CANADA	35 625 300	2 395	2 404	2 404	-
TOTAL	35 625 300	2 395	2 404	2 404	-
[illegible] METAL ARTICLES, NSPF, FOR REMANUFACTURE LB					
CANADA	3 085 265	600	605	605	(Z)
BRAZIL	750	75	75	75	(Z)
URUGUAY	580	310	310	310	(Z)
ARGENT	3 400	6 400	6 400	6 415	12
U KING	35 162	107	107	116	9
BELGIUM	6 626	172	172	175	3
FRANCE	137 000	76	76	82	6
SWITZLD	1 300	113	113	114	1
JAPAN	19 543	76	76	78	2
OTH CTY	13 523	113	113	124	11
TOTAL	3 303 440	8 254	8 260	8 304	45
[illegible] FERROCHROME, OVER 3% CARBON, VALUED UNDER 38 CENTS PER LB CLB					
ZIMBABW	7 388 575	590	590	724	133
TOTAL	7 388 575	590	590	724	133
[illegible] FERROCHROME, OVER 3% CARBON, VALUED [illegible] 38 CENTS PER LB CLB					
ZIMBABW	11 049 004	-	-	-	-
TOTAL	11 049 004	-	-	-	-
[illegible] EQUIPMENT AND REPAIRS OF VESSELS					
CANADA	-	2 313	2 313	2 313	-
PANAMA	-	60	60	60	(Z)
VENEZ	-	83	83	83	(Z)
BRAZIL	-	94	94	94	(Z)
ARGENT	-	66	65	66	(Z)
SWEDEN	-	90	90	90	-
U KING	-	358	358	358	(Z)
NETHLDS	-	310	309	310	1
FR GERM	-	198	198	198	1
SPAIN	-	80	80	80	-
PORTUGL	-	85	85	85	-
S ARAB	-	90	90	90	-
SINGAPR	-	1 240	1 240	1 240	(Z)
INDNSIA	-	813	813	813	(Z)
PHIL R	-	160	160	160	(Z)
KOR REP	-	246	246	246	1
HG KONG	-	143	143	143	(Z)
CHINA T	-	290	290	290	(Z)
JAPAN	-	3 988	3 988	3 988	1
REP S AF	-	94	94	94	(Z)
OTH CTY	-	317	317	318	(Z)
TOTAL	-	11 171	11 170	11 176	6
[illegible]					
[illegible]	-	6	6	6	-
TOTAL	-	6	6	6	-
[illegible] UNDER 251 FORMAL AND INFORMAL ENTRIES ESTIMATED					
CANADA	5 550	52 308	52 309	53 028	320
MEXICO	8 573	107 984	107 984	108 632	648
GUATMAL	35	303	303	306	3
SALVADR	15	161	161	162	1
HONDURA	6	90	90	91	1
C RICA	14	65	65	65	(Z)
PANAMA	19	173	173	174	1
BERMUDA	20	194	194	195	1
BAHAMAS	17	196	196	197	1
JAMAICA	16	189	189	190	1
HAITI	91	619	619	623	4
DOM REP	75	710	710	714	4
LEW LW I	11	74	74	75	(Z)
BARBADO	8	61	61	61	(Z)
TRINID	7	65	65	65	(Z)
N ANTIL	6	113	113	113	1
F W IND	6	62	62	63	(Z)
COLOMB	53	566	566	570	3
VENEZ	55	330	330	332	2
ECUADOR	23	185	185	186	1
PERU	40	234	234	235	1
CHILE	22	225	225	226	1
BRAZIL	146	1 120	1 120	1 128	7
[illegible]	11	118	118	118	1
ARGENT	45	465	455	467	3
ICELAND	37	361	361	363	2
SWEDEN	304	2 917	2 917	2 934	17
NORWAY	95	936	936	941	6
FINLAND	54	698	698	702	4
DENMARK	300	3 245	3 245	3 264	19
U KING	2 190	23 046	23 046	23 184	138
IRELAND	569	7 057	7 057	7 100	42
NETHLDS	205	2 318	2 318	2 332	14
BELGIUM	174	1 571	1 571	1 580	9
FRANCE	700	7 625	7 625	7 671	47
FR GERM	2 381	25 680	25 680	25 814	134
GERM DR	8	87	87	87	1
AUSTRIA	109	1 082	1 082	1 093	11
CZECHO	12	135	135	136	1
HUNGARY	9	95	95	95	1
SWITZLD	547	6 126	6 126	6 163	37
POLAND	23	300	300	300	1
SPAIN	161	1 437	1 437	1 446	9
PORTUGL	40	380	380	382	2
ITALY	661	6 308	6 308	6 346	38
YUGOSLV	23	205	205	207	1
GREECE	46	525	525	528	3
ROMANIA	18	136	136	136	1
TURKEY	10	95	95	96	1
ISRAEL	56	360	361	364	3
CYPRUS	5	61	61	61	(Z)
S ARAB	82	526	526	529	3
ARAB EM	21	169	169	170	1
AFGHAN	10	103	103	104	1
INDIA	214	1 944	1 944	1 956	12
PAKISTN	45	291	291	293	2
NEPAL	5	62	62	62	(Z)
SRI LKA	13	84	84	85	1
THAILND	191	1 655	1 655	1 665	10
MALAYSA	40	337	337	339	2
SINGAPR	149	1 090	1 090	1 096	6
INDNSIA	46	378	378	380	2
PHIL R	252	1 779	1 779	1 790	11
CHINA M	117	1 112	1 112	1 119	7
KOR REP	609	4 047	4 047	4 072	24
HG KONG	2 762	22 963	22 963	23 099	136
CHINA T	1 225	9 395	9 395	9 451	56
JAPAN	3 085	24 735	24 735	24 884	148
AUSTRAL	216	1 890	1 890	1 900	11
N ZEAL	73	702	702	706	5
T PAC I	6	63	63	63	(Z)
EGYPT	13	187	187	188	1
KENYA	8	87	87	87	1
REP S AF	64	464	464	467	3
UNDCTY	209	3 630	3 606	3 636	40
OTH CTY	127	1 029	1 029	1 035	6
TOTAL	33 323	348 469	[illegible]	[illegible]	2 061

Source: U.S. Imports For Consumption And General Imports, TSUSA Commodity by Country of Origin, U.S. Department of Commerce, Bureau of the Census, FT246/Annual 1981.

STATEMENT OF THE AMERICAN FIBER, TEXTILE, APPAREL COALITION, BY STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES INC.

SUMMARY

AFTAC opposes S. 1184 for the following reasons:

The MFA requires a sophisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. This requires precise customs documentation. There are already an indeterminate amount of apparel imports which do not get charged against negotiated quotas due to informal entry. An increase from $250 to $1,000 in the informal entry ceiling will result in considerably larger number of import shipments which will not be counted against negotiated MFA levels, greatly impairing the operation of the MFA.

A major priority for the import-sensitive textile and apparel industries is accurate trade data in order to analyze the economic impact of imports on the domestic market. S. 1184 would be a detriment to the collection of accurate trade data.

Accurate trade data are also needed to set restraint levels on textile and apparel products not currently covered by restraints under the MFA, but which are brought under control as imports increase to the point of causing disruption to the U.S. market. The new ceiling proposed under S. 1184 would pose a major problem in this regard.

The inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the level of informal entry is expanded. Aggregate import levels could become increasingly understated if shipments under $1,000 are not included in Census data.

Because many textile and apparel items are of low-unit value, large quantities can be shipped under a $1,000 informal entry ceiling.

An increase in the informal entry ceiling will exacerbate the problem of undervaluation by exporters in order to avoid being subject to restraint levels.

AFTAC urges the Subcommittee to consider the ill-effects of this legislation on the operation of the MFA and on the textile and apparel industry. We urge you not to favorably report this legislation.

The American Fiber, Textile, Apparel Coalition (AFTAC) is a national coalition of labor and management organizations in the textile and apparel industry in the United States. The 20 member organizations of AFTAC listed on the cover page of my testimony are located throughout the nation and produce the vast majority of textile and apparel items made in this country.

AFTAC wishes to record its strong opposition to S. 1184, a bill to increase the maximum value of import shipments eligible for informal entry from $250 to $1,000. The textile and apparel industry sector is sensitive to imports, and particularly to imports from low-wage developing countries. The industry relies upon the Multifiber Arrangement (MFA) to alleviate the import pressure on the textile and apparel industries. While the MFA may not be a wholly satisfactory mechanism for import restraint, it is, nonetheless, the only import program now in effect for this industry.

The MFA requires a sophisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. The procedure for monitoring imports requires precise customs documentation as to the kinds, quantity, and value of imported articles. Even under current statutes, however, some apparel items from some countries, despite inclusion in the MFA, can be imported into the United States under informal entry procedures if the total value of the shipment does not exceed $250. There are already an indeterminate number of apparel imports which do not get charged against negotiated quotas due to infromal entry.

It is clear that an increase in the maximum informal entry level from $250 to $1,000 will result in a considerabley larger number of import shipments which will not be counted against negotiated MFA levels. This will not only hinder the operation of the MFA, but will also injure the industry's ability to monitor its competitive position in the U.S. market. Accurate trade data are a major priority for all import-sensitive industries in their efforts to analyze the economic impact of imports on the domestic market. Many individual textile and apparel industry segments, especially those in which high-volume, low-unit value imports are common, would be adversely affected by an increased dollar value limit for items eligible for informal entry.

Accurate trade data are also tremendously important to set restraint levels on textile and apparel products not presently coverd by restaints under the MFA but which are brought under control as imports increase to the point of causing disruption to the U.S. market. When such actions are taken, import levels are set based on imports in the first twelve of the last fourteen months. Import data must fully reflect import levels in order that restraint levels are properly set. An increase in the level of informal entry, which would result in inaccurate date collection, would make this effort difficult.

The textile and apparel industry is still the largest employer in manufacturing in the United States although employment in the textile industry is now 1,932,000—200,000 below 1980 levels and 400,000 below employment in 1974. If the present import trend continues, estimates show that industry employment will decline further by 300,000 workers by 1990. Over 65 percent of the workers in the industry are women and, since many of them are secondary wage earners, many are unable to relocate. Furthermore, one-fourth of the Industry's workforce is comprised of minorities and much of the apparel industry is concentrated in large U.S. cities and metropolitan areas where alternative employment opportunities are limited.

Many segments of this industrial complex, particularly in the apparel area, have been characterized by plant shutdowns, declining domestic production, and declining domestic employment, all as a result of increasing quantities of imports. The manufacture of apparel is highly labor intensive. Domestic apparel producers find it difficult to compete with foreign producers, especially those in low wage, developing countries.

The concern over the pending legislation is self-evident. A concern with regard to import levels dictates a concern with regard to accurate trade statistics. Fair and equitable administration of the MFA depends upon accurate trade data. An increase in the maximum value of merchandise eligible for informal entry will make proper and effective administration of this import program exceedingly difficult. Many imported items affecting the textile and apparel industry have relatively low average unit values. This is becoming an even greater problem today as the People's Republic of China with textile and apparel products with particularly low unit values increases its shipments to the U.S. The inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the level of informal entry is expanded. Aggregate import levels could become increasingly understated if shipments under $1,000 are not included in Census data.

Attached to our statement is an article from a Hong Kong publication which describes the action taken by the U.S. Customs Service in Hong Kong when it determined that made-to-measure clothing shipped to the U.S. was being undervalued to avoid being subject to the restraint levels on exports from Hong Kong. The U.S. Customs Service reported that this practice had also resulted in a loss of duty revenue to the U.S. of US $300,000 to 500,000 monthly. Raise the informal entry level to $1,000 and the Hong Kong merchants will have an even greater incentive to cheat.

There are many examples of imported textile and apparel items which are of low unit value and which therefore could take advantage of informal entry procedures. For example, the average unit value of imports of men's and boys' cotton shirts from the PRC in 1982 was $22.89 per dozen, less than $1 each. Currently, 11 dozen of these shirts can enter the United States under the $250 informal entry ceiling. If the ceiling is raised to $1,000, shipments of 44 dozen shirts can pass through U.S. Customs without being logged for statistical purposes. Shipments such as these would go uncounted if S. 1184 is enacted. Unrecorded imports could increase the disruption to the U.S. market without recourse by the U.S. Government.

AFTAC urges this Subcommittee to consider carefully the negative consequences that passage of S. 1184 could have on the operation of the Multifiber Arrangement and on the viability of the domestic textile and apparel industry, and other import-sensitive sectors. We believe that the evidence justifies that this legislation not be favorably reported by the Subcommittee or the full Committee.

ECONOMIC CONSULTING SERVICES, INC.,
Washington, DC, November 4, 1983.

THEODORE KASSINGER, Esq.,
Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR TED: I am writing on behalf of the Leather Products Coalition. You will recall I testified on October 21 in opposition to S. 1184 with regard to increasing the informal entry level.

On the basis of the amended bill, copy attached, which excludes certain schedules and parts thereof of the Tariff Schedules of the United States from the application of the increase in the informal entry level, we now concur in this bill.

The members of the Leather Products Coalition on whose behalf I testified on October 21 are the following:

Amalgamated Clothing and Textile Workers Union, AFL-CIO.
Footwear Industries of America, Inc.
International Leather Goods, Plastic and Novelty Workers' Union, AFL-CIO.
Luggage and Leather Goods Manufacturers of America, Inc.
United Food and Commercial Workers Union, AFL-CIO.
Work Glove Manufacturers Association.

Sincerely yours,

STANLEY NEHMER,
President.

Attachment.

A BILL To amend the Tariff Act of 1930 to increase from $250 to $1,000 the value of goods eligible for informal entry, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498(a)(1) is amended—

(1) by striking out "$250" and inserting in lieu thereof "$1,000"; and

(2) by inserting before the semicolon at the end thereof the following: ", except that this paragraph does not apply to articles valued in excess of $250 classified in the Tariff Schedules of the United States Annotated in Schedule 3; Schedule 7 part 1, part 4 subpart A, part 7 subpart B, part 12 subparts A and D, and part 13 subpart B; and the Appendix to the Tariff Schedules, parts 2 and 3; or any other article for which formal entry is required without regard to value".

AMERICAN FIBER, TEXTILE, APPAREL COALITION,
Washington, DC, November 4, 1983.

Mr. TED KASSINGER,
Counsel, Senate Finance Committee, Dirksen Senate Office Building, Washington, DC.

DEAR MR. KASSINGER: On behalf of the American Fiber, Textile, Apparel Coalition (AFTAC), I am enclosing an alternative proposal to S. 1184 by Senator Matsunaga, to amend the Tariff Act of 1930 to increase from $250 to $1,000 amount for informal entry of goods. The alternative proposal has the support of this coalition. It would exclude textiles and apparel from the provisions of the bill.

I trust this information will be helpful to you.

Sincerely,

W. RAY SHOCKLEY.

Enclosure.

[Tab 4]

S. 1184 AS AMENDED AND REPORTED BY THE SENATE FINANCE COMMITTEE

A BILL To amend the Tariff Act of 1930 to increase from $250 to $1,000 the value of goods eligible for informal entry, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498(a)(1) is amended—

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to be a Member of the Board of Directors of the Corporation for Public Broadcasting, after the nominees testified and answered questions in their own behalf.

BUSINESS MEETING

Committee on Finance: Committee ordered favorably reported the following bills:

H.R. 3398, to make certain changes in the tariff treatment of specified articles and to grant duty-free treatment to specified articles, with amendments. As approved by the committee, the bill incorporates the provisions of the following measures, as amended: S. 221, S. 1123, S. 1141, S. 1158, S. 1263, S. 1476, S. 1478, S. 1481, S. 1482, S. 1483, S. 1484, S. 1485, S. 1759, S. 1771, S. 1845, S. 1853, S. 1940, S. 144 (amended to include the substance of S. 1420), S. 1808, S. 1636, S. 1184, S. 1542, S. 1524, and H.J. Res. 290; and

H.R. 2163, to expand the articles subject to the 10 percent manufacturer's excise tax on sport fishing equipment, extend the time for paying the excise tax, reallocate the motorboat fuels tax and establish a new tax-exempt National Fish and Wildlife Foundation, with an amendment in the nature of a substitute. As approved by the committee, the amendment incorporates the provisions of S. 230, S. 739, and S. 453 (as amended).

A press release summarizing the actions taken by the committee today will be available in the committee office in room SD–219.

NOMINATIONS

Committee on Foreign Relations: Committee concluded hearings on the nominations of Robert E. Lamb, of Georgia, to be Assistant Secretary of State for Administration, Frank J. Donatelli, of Virginia, to be an Assistant Administrator of the Agency for International Development, Diego C. Asencio, of Florida, to be Ambassador to Brazil, Frank V. Ortiz, Jr., of New Mexico, to be Ambassador to Argentina, and Clayton E. McManaway, Jr., of the District of Columbia, to be Ambassador to Haiti, after the nominees testified and answered questions in their own behalf. Mr. Asencio was introduced by Senator Simpson, and Mr. Ortiz was introduced by Senator Domenici.

MALT BEVERAGE INTERBRAND COMPETITION ACT

Committee on the Judiciary: Committee held hearings on S. 1680, to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws, receiving testimony from William F. Baxter, Assistant Attorney General, Antitrust Division, Department of Justice; Walter T. Winslow, Deputy Director, Bureau of Competition, Federal Trade Commission; Ernest Gellhorn, Case Western Reserve University, Cleveland, Ohio; Steve L. Barsby, Steve L. Barsby and Associates, Inc., Falls Church, Virginia; W. John Jordan, Seton Hall University, South Orange, New Jersey, William Young, General Wholesale Beer Company, Atlanta, Georgia; Richard M. Quinn, The Beer Company, Hartford City, Indiana; and Richard B. Willett, Alexander Grant and Company, Washington, D.C.

Hearings were recessed subject to call.

NOMINATIONS

Committee on the Judiciary: Committee concluded hearings on the nominations of W. Eugene Davis, of Louisiana, to be U.S. Circuit Judge for the Fifth Circuit, Stanley S. Harris, of Maryland, to be U.S. District Judge for the District of Columbia, Leonore C. Nesbitt, to be U.S. District Judge for the Southern District of Florida, G. Kendall Sharp, to be U.S. District Judge for the Middle District of Florida, George E. Woods, to be U.S. District Judge for the Eastern District of Michigan, and Jane A. Restani, of Virginia, to be a Judge for the U.S. Court of International Trade, after the nominees testified and answered questions in their own behalf. Mr. Davis was introduced by Senators Long and Johnston, Mr. Harris was introduced by Senators Mathias and Warner, Ms. Nesbitt and Mr. Sharp were introduced by Senator Hawkins, Mr. Woods was introduced by Senators Reigle and Levin, and Representative Sawyer, and Ms. Restani, was introduced by Senator Warner.

House of Representatives

Chamber Action

Bill Introduced: 1 public bill, H.R. 4323 was introduced.

Page H[illegible]

Bills Reported: Reports were filed as follows:

H.R. 29, to recognize the organization known as the Polish Legion of American Veterans, U.S.A., amended (H. Rept. 98–489);

H.R. 1095, to grant a Federal charter to the 369th Veterans' Association, amended (H. Rept. 98–490); and

NATIONAL CUSTOMS BROKERS & FORWARDERS
ASSOCIATION OF AMERICA, INC.,
New York, NY, May 4, 1984.

Re H.R. 4178 (Mr. McKinney) Increasing the Amount for "Informal" Customs Entry of Goods.

Hon. SAM M. GIBBONS,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives.

DEAR CHAIRMAN GIBBONS: The National Customs Brokers & Forwarders Association of America, Inc. ("NCBFAA"), is a nationwide association of Customs brokers and freight forwarders; and which also has affiliated regional associations located at major ports throughout the United States. In response to your invitation, we would like to make the following comment regarding the above captioned bill.

H.R. 4178 would change the dollar limit for "informal" entries under § 498(a) of the Tariff Act of 1930 [authorizing the Secretary of the Treasury to prescribe regulations for the entry of various classes of goods) by raising the present limit of $250 to $1,500 (§ 498(a)(1); 19 U.S.C. 1498(a)(1)]. However, amended § 498(a)(1) would not apply to textile and textile products valued in excess of $250, merchandise subject to quantitative import restrictions, articles subject to antidumping or countervailing duties or any other article for which formal entry is required without regard to value. In general informal entries are completed with less paperwork than "formal" entries made under § 484 of the Tariff Act (19 U.S.C. § 1484). Usually, the time, effort, and cost of the importer is somewhat less than in the case of merchandise requiring "formal" entry. Likewise, we understand that the Treasury Department supports an increase in the allowable dollar value for informal entries because it believes that the average cost of Customs of processing an informal entry is sigless than that for formal entries, and in addition, the paperwork burden on the importing public would be reduced.

The NCBFAA does not object to increasing the § 498(a)(1) limit to $600.00. We think that the $1500 figure proposed in the present bill is excessive. We also believe that the Subcommittee should carefully monitor Customs' ability to develop a workable system to handle the increase in informal entries under the higher ceiling. We also urge that the bill be amended to add the following limitations:

1. Shipments entered through the mails under "informal entry" procedures should be limited to a value of $250. According to knowledgeable NCBFAA member brokers, the use of mail shipments, which are handled outside the usual channels for imported merchandise, significantly increases the chance of error, fraud, etc. In many instances, dutiable merchandise is erroneously released to the addressee without the collection of duties, or with collection of incorrect duties, or even without the package being opened and examined at all.[1] We fear that an across-the-board dollar-value increase for informal entries, covering all types of merchandise entered via the mails or otherwise, would be an invitation to unscrupulous shippers or consignees to commit wholesale evasion of Customs laws and regulations and widespread fraud on the revenue. The entry documents are prepared by Customs officials assigned to post offices rather than the importer or his agent, as is the case with other importations. Therefore, by increasing the informal value limitation for mail entries, the work load on Customs employees and the cost to the Government will also be substantially increased. Therefore we urge that the present clause in § 498(a)(1), which includes merchandise "imported in the mails or otherwise," be deleted, and replaced with a proviso that retains the present $250 limit for such importations.

2. We also urge that the proposed increase in the value limitation for informal entries be accompanied by language which would preclude the unauthorized practice of Customs brokerage by parties not holding a valid Customs broker's license under § 641 of the Tariff Act (19 U.S.C. § 1641). This problem was addressed by the last Congress in § 201(d) of Public Law 97-446, which amended § 484 of the Tariff Act (pertaining to entry procedures in general) to provide, in substance, that the "importer of record" on the entry documents must be either the owner or the purchaser, or, upon designation by the owner, purchaser or consignee, a licensed Customs broker. As was explained in House Report No. 97-837, 97th Congress, 2nd Session, on § 201 of H.R. 6867 (which ultimately became § 201 of Public Law 97-446):

"The remaining parts of this provision deal with the functions of nominal consignees. This clarifying and constricting of responsibilities has grown out of a seeming ambiguity in the existing rulings. A Customs Service ruling stated that courier services may file informal or formal customs entries in their own name and therefore become a nominal consignee eligible to make entries on behalf of others. At the same time, customs law states that informal of formal customs business can be transacted only by a licensed broker. Under the ruling concerning courier services, a concern has arisen that this may so broaden the definition of those who can legally transact customs business that it would be outside that which is desirable.

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[1] See 1977 Association testimony on H.R. 8149, 95th Congress, First Session, before the Subcommittee on Trade of the House Ways & Means Committee (Serial 95-31, pp. 403-405).

"Section 201 therefore modifies Section 484 of the Tariff Act of 1930 to provide that required entry documentation can be filed only by the owner or purchaser of merchandise or by a person holding a valid license to conduct such entry business."

The above-mentioned amendment, however, did not affect the introductory language to § 484, which excepts from its operation, inter alia, § 498 of the Tariff Act. To avoid possible circumvention of the prohibition in Public Law 97-446 against unlicensed "nominal" consignees clearing merchandise on behalf of others, via the device of informal entries made under the new higher value limitation, we urge that a conforming amendment be inserted stating as follows:

"In the case of an entry made under the provisions of Section 498(a)(1), the importer of record shall be either the owner or purchaser of the merchandise, or, when appropriately designated by the owner, purchaser, or consignee, a person holding a valid license under Section 641 of the Tariff Act of 1930 (U.S.C. 1641)."

Extending the prohibition against unlicensed parties performing Customs brokerage by preparing and submitting informal entries in their own names on behalf of others, would in no way tend to increase Customs' workload, since (as Customs has on several occasions acknowledged to the Congress) entries prepared and filed by professional, licensed Customs brokers cause far fewer processing difficulties than entries prepared and filed by unlicensed parties. In addition, the proposed amendment would not automatically affect the cost of importing under an informal entry, because an owner or purchaser desiring to prepare and file his informal entry without the use of a broker may still do so.

To be sure, present § 498(a) authorizes the Secretary to include, in his discretion, appropriate § 484 requirements in regulations governing § 498(a) entries. Nevertheless we think that the prohibition should be made mandatory and we therefore urge that the amendment be adopted. Should you deem it appropriate, we would be pleased to meet with representatives of your staff to discuss our comments.

Sincerely,

WILLIAM J. ST. JOHN, Jr.

H.R. 5182

To amend the Tariff Schedules of the United States to clarify the duty treatment of certain types of plywood.

STATEMENT OF BRONSON J. LEWIS, EXECUTIVE VICE PRESIDENT, AMERICAN PLYWOOD ASSOCIATION

The American Plywood Association supports H.R. 5182 because it would correct an error in tariff interpretation by the U.S. Customs Service. Certain Canadian softwood plywoods entering the U.S. have been wrongly classified by the Customs Service as "building boards," enabling them to qualify for a much lower tariff than the 20 percent lawful tariff on Canadian softwood plywoods imported to this country. H.R. 5182 would correct an error that has already negatively impacted the U.S. plywood industry, and that has potential for much greater damage.

On behalf of the American Plywood Association, which represents the producers of more than 81 percent of the structural panels made in the United States, I wish to express strong support for H.R. 5182 introduced by Congressman Don Bonker to correct an error in tariff interpretation by the U.S. Customs Service. The error has the potential to significantly affect U.S. manufacturers of softwood plywood by exposing them to unfair foreign competition.

BACKGROUND

The U.S. tariff rate (TSUS 240.21) for Canadian softwood plywood imported into the United States is 20 percent. However, because of a U.S. Customs interpretation which we hold to be in error, certain Canadian softwood plywood that has been processed (i.e., tongue-and-grooved, edge-worked or shiplapped), is entering the U.S. as "building board" rather than softwood plywood.

Under the "building board" category (TSUS 245.80), this Canadian plywood has a tariff rate of 3.1 percent ad valorem plus 1.7 cents per pound. This equates to about a flat 10 percent tariff or half the tariff rate for softwood plywood. The "building board" tariff is also on a declining scale which will drop to 2.4 percent ad valorem plus 1.3 cents per pound in 1987.

On March 4, 1982, the American Plywood Association (APA) petitioned the U.S. Customs Service requesting that these plywood panels be properly reclassified as plywood with a softwood face under TSUS 240.21 (rather than as building boards). Customs advised APA on December 13, 1982 that such products would continue to be classified under TSUS 245.80. APA contested this decision which Customs later reaffirmed.

H.R. 5182 would correct the inequity by placing softwood plywood which has been edge-treated (shiplapped) into its true category of "plywood" rather than "building boards."

IMPACT

One of the Washington State plywood plants affected by this Canadian misuse of U.S. tariffs estimates the amount of this product imported would allow a second shift at their facility. Estimated damages, just for this one plant, is $150,000 a month.

While the amount of these incorrectly styled "building boards" imported from Canada is a relatively small portion of total U.S. produced softwood plywood, it increased a healthy 74 percent in 1982. While imports of Canadian softwood plywood (termed "building board") increased, employment in the U.S. softwood veneer and plywood industries dropped to 35,000 workers in 1982—down from 43,300 in 1979 (U.S. International Trade Commission Publication 841).

Unless the Customs error is corrected, the United States could lose significant tariff revenue.

As the "building board" tariff schedule declines, exporting plywood under the "building board" tariff category could spread to all forms of Canadian softwood plywood exported to the U.S. This would seriously and unfairly impact the U.S.

softwood plywood industry, which currently is struggling to recover from the worst recession of its history.

A copy of the latest membership roster for the American Plywood Association is attached.

APA Source List

Producing Members

MARCH 1984

AMERICAN PLYWOOD ASSOCIATION PO BOX 11700 TACOMA WA 98411 AC 206 565-6600

AMERICAN FOREST PRODUCTS COMPANY
Amador-Calaveras Division
Martell, California 95654
General Manager—R. J. Pettit
National Sales Division—Panel Products
P.O. Box 8220, Stockton, California 95208
General Sales Manager—Bernie Sloop
Sales: 209 946-5800

ASTORIA PLYWOOD CORPORATION
P.O. Box 117, Astoria, Oregon 97103
President—Paul Welfley
Gen. Mgr. & Sales Mgr.—Elmer Brown
Sales: 503 325-6021

BEAUMONT PLYWOOD CORPORATION
P.O. Box 358, Beaumont, Mississippi 39534
President—Warren J. Hood, Jr.
General Manager—John N. Galloway
Sales: 601 784-3472

BINGEN PLYWOOD CO.
P.O. Box 266, Bingen, Washington 98605
President—W. D. Stevenson
Superintendent—Harold Hall
Sales Manager—Frank Brown
Sales: 509 493-2155

BOHEMIA INC.
P.O. Box 1819, Eugene, Oregon 97440
President & Chief Executive Officer—S. E. Pittman
Sales Manager—Steven Grimes
Plant: Drain and Vaughn, Oregon
Sales: 503 342-6262

BOISE CASCADE CORPORATION
One Jefferson Square, Boise, Idaho 83728
President & Chief Operating Officer—Jon H. Miller
Sr. Vice Pres., Timber and Wood Products—John R. Forrest
Plants: Elgin, Medford and White City, Oregon; Kettle Falls and Yakima, Washington; Emmett, Idaho
Sales: Wood Products Marketing
P.O. Box 2835, Portland, Oregon 97208
Vice President & General Manager—Vernon R. Veron
Plywood Sales Manager—Rex Parsons
Sales: 503 227-0344

BOISE CASCADE CORPORATION
Scarlet Oak Building, 8700 Red Oak Boulevard
Charlotte, North Carolina 28210
Area Manager—C. R. Kelley
Regional Production Manager, So. Atlantic Region—Gary Putnam
Sales Manager—William Burkholder
Plants: Moncure, North Carolina; Chester, South Carolina
Sales: 704 527-6210

BOISE SOUTHERN COMPANY
P.O. Box 128, Florien, Louisiana 71429
Vice Pres. & Mgr., Wood Products Manufacturing—Gordon R. McKay
Sales—Robert Miller
Plants: Florien and Oakdale, Louisiana
Sales: 318 586-3565

CHAMPION INTERNATIONAL CORPORATION
Building Products Division
One Champion Plaza, Stamford, Connecticut 06921
Executive Vice President—Richard W. Lowry
Order Central, P.O. Box 10039
Stamford, Connecticut 06921
Director—Lyle G. Thompson
Plants: Bonner, Montana; Lebanon, Roseburg and Gold Beach, Oregon; Seattle, Washington
Sales: 203 358-7764

COASTAL LUMBER COMPANY
P.O. Box 829, Weldon, North Carolina 27890
Executive Vice President, Marketing—Stephen H. Conger
Plywood Sales Manager—George Barrett
Plant: Havana, Florida
Sales: 919 536-4211

COOS HEAD TIMBER COMPANY
P.O. Box 750, Coos Bay, Oregon 97420
President—F. Willis Smith
Sales Manager—Pat Ball
Sales: 503 267-2193

CROWN ZELLERBACH
1500 S.W. First, Portland, Oregon 97201
N.W. Sales Manager—Jim Paloma
Plant: Omak, Washington
Sales: 503 221-7297

CUSTOM PANEL, INC.
P.O. Box 1911, Tacoma, Washington 98401
Owner & President—Willie Wanker
Plants: Madras, Oregon and Tacoma, Washington
Sales: 503 475-6773/206 572-7300

ELMENDORF BOARD CORPORATION
RFD-2, River Road
Claremont, New Hampshire 03743
President/General Manager—Paul Heenan
Vice President/Sales & Marketing—David Vagos
Sales: 603 542-9912

EVANS PRODUCTS COMPANY
Forest-Fiber Products Group
P.O. Box 3295, Portland, Oregon 97208
Group President—Peter H. Koehler
Sales Manager—O. E. Lodeen
Plant: Aberdeen, Washington
Sales: 503 222-5592

FORESTPLY INDUSTRIES, INC.
436 Quay Street, Kincheloe, Michigan 49788
Owner—Quay Jorgensen
General Manager—Jerry Thorpe
Sales: 906 495-2216

FORT VANCOUVER PLYWOOD COMPANY
P.O. Box 289, Vancouver, Washington 98666
General Manager—John P. Bannan
Sales Manager—Dan Krieger
Sales: 206 694-3368

FOURPLY INC.
P.O. Box 890, Grants Pass, Oregon 97526
Pres. & Gen. Mgr.—Don Deardorff
Sales Manager—Michael Merrill
Sales: 800 547-5991

GEORGIA-PACIFIC CORPORATION
P.O. Box 105605, Atlanta, Georgia 30348
Chairman—Robert E. Flowerree
Exec. Vice Pres., Building Products—
Stanley E. Dennison
Plants: Coquille, Springfield and Toledo, Oregon;
Monticello and Warm Springs, Georgia; Crossett and
Fordyce, Arkansas; Gloster, Louisville and Taylorsville,
Mississippi; Talladega and Peterman, Alabama;
Prosperity and Russellville, South Carolina; Emporia,
Virginia; Whiteville and Dudley, North Carolina;
Hawthorne, Florida; Woodland, Maine
Sales: West — 503 222-5561; South — 404 521-4000

GREAT SOUTHERN PLYWOOD COMPANY
P.O. Box 215, Cedar Springs, Georgia 31732
Vice Pres. & Gen. Mgr.—W. K. Hoseid
Sales Manager—Judy Moore
Sales: 912 372-5521

GREGORY TIMBER RESOURCES, INC.
P.O. Box C, Glendale, Oregon 97442
Owner—William H. Gregory
General Manager—Tom Mehl
Sales Manager—Robert Reyneke
Sales: 503 832-2121

HARDEL MUTUAL PLYWOOD CORPORATION
P.O. Box 365, Olympia, Washington 98507
President—David Wild
Gen. Mgr. & Sales Mgr.—V. A. Durham
Sales: 206 352-7563

HUNT PLYWOOD COMPANY, INC.
Rt. 1, Box 154, Pollock, Louisiana 71467
Vice Pres. & Gen. Mgr.—Henry E. Clark
Sales Manager—Jimmy Hunt
Sales: 318 255-1130

IDAHO VENEER COMPANY
P.O. Box 339, Post Falls, Idaho 83854
Pres. & Gen. Mgr.—Leonard A. Malloy
Sales Manager—W. D. "Bill" Bean
Sales: 208 773-4511

INTERNATIONAL PAPER COMPANY
International Paper Plaza
77 West 45th St., New York, N.Y. 10036
Sales Office: P.O. Box 809024, Dallas Texas 75380-9024
Gen. Mgr. Marketing — Wood Products Group
Richard P. Sutton
Mgr., Wood Products Marketing
James P. Olmedo, Jr.
Plants: Gardiner, Oregon; Gurdon, Arkansas;
Nacogdoches, Texas; Wiggins, Mississippi; Springhill.
Louisiana; Statesville, North Carolina
Sales: 214 934-8000

KIRBY FOREST INDUSTRIES, INC.
P.O. Box 1514, Houston, Texas 77001
President—J. E. Stevens
Gen. Sales Mgr.—Porter Taylor
Plants: Silsbee, Bon Wier and Cleveland, Texas
Sales: 713 659-1421

KOGAP MANUFACTURING COMPANY
P.O. Box 1608, Medford, Oregon 97501
President—S. V. McQueen
Manager & Sales Manager—Charles Heffner
Sales: 503 776-6500

LANG & GANGNES CORPORATION – MEDPLY
P.O. Box 2488, White City, Oregon 97501
President & Sales Manager—Clyde Lang
Sales: 503 826-3142

LINNTON PLYWOOD ASSOCIATION
10504 NW St. Helens Rd., Portland, Oregon 97231
President—Bill Allen
General Manager—Richard Hall
Sales Manager—Jack Finnell
Sales: 503 286-3672

LOUISIANA-PACIFIC CORPORATION
111 S.W. Fifth Avenue, Portland, Oregon 97204
Chairman & President—Harry A. Merlo
Plants: Corrigan, Lufkin and New Waverly, Texas; Urania,
Louisiana; Arcata and Standard, California; Hayward,
Wisconsin; Houlton, Maine
Sales: Corrigan, Lufkin, New Waverly & Urania plants —
Richard Natale 409 756-0541
Arcata plant — James DiMatteo 707 822-5961
Standard plant — Jim Murray 916 527-2075
Hayward plant — William Jacob 312 397-8633

MacMILLAN BLOEDEL INC.
P.O. Box 336, Pine Hill, Alabama 36769
Pres. Pine Hill Operations—Wyatt Shorter
Resident Mill Sales Manager, Wood Products—
J. Robert Paine
Sales: 205 963-4391

MacMILLAN BLOEDEL LTD.
P.O. Box 2504, Annacis Island
New Westminster, B.C. V3L 5J1, Canada
Manager, New Products Mktg.—Art Schmon
Sales: 604 526-3624

MANVILLE FOREST PRODUCTS CORPORATION
P.O. Box 488, Station 10, West Monroe, Louisiana 71291
President—W. T. Stephens
Plywood Sales Manager—C. A. Casteel
Plants: Joyce, Louisiana; Huttig, Arkansas
Sales: 318 362-2516

MEDFORD CORPORATION
P.O. Box 550, Medford, Oregon 97501
Pres. & Chief Operations Officer—Robert F. Higgins
Vice President, Operations—Robert Kellso
Plywood Sales Manager—R. E. Atterbury
Plants: Medford and White City, Oregon
Sales: 503 779-1581

MILLER REDWOOD CO., PLYWOOD DIVISION
P.O. Box 840, Merlin, Oregon 97532
Resident Mgr.—William R. Roberts
Plywood Sales Mgr.—Peter Reyneke
Sales: 503 476-6879

MT. BAKER PLYWOOD INC.
P.O. Box 997, Bellingham, Washington 98225
President—James R. Johnston
General Manager—Willard Muhlbeier
Sales: 206 733-3960

MULTNOMAH PLYWOOD CORPORATION
P.O. Box 599, St. Helens, Oregon 97051
President—William Ezzell
Sales Manager—Bob Blackstone
Sales: 503 228-8523

NORTH PACIFIC PLYWOOD INC.
P.O. Box 38, Graham, Washington 98338
President—Bruce Hager
General Mgr. & Sales Mgr.—Burgy Church
Sales: 206 847-8851

OWENS-ILLINOIS, INC.
Forest Products Division
P.O. Box 1000, Jasper, Texas 75951
Plant Manager—E. R. Journee
Production Manager—Brian Thompson
Wood Products Sales—Jim Perkins
Sales: 409 384-5404

PELICAN SPRUCE MILLS LTD.
11550 - 154 Street
Edmonton, Alberta T5M 3N8, Canada
President—Alan H. Owen
Sales: 403 452-5395
Plant: Edson, Alberta

PENINSULA PLYWOOD
Division of ITT-Rayonier, Inc.
439 Marine Drive, Port Angeles, Washington 98362
Director, Wood Products Northwest—Lee Nutter
Division Manager—Paul Bialous
Sales Manager—Karl Alteneder
Sales: 206 457-4421

PLUM CREEK TIMBER CO., INC.
P.O. Box 160, Columbia Falls, Montana 59912
President & Chief Executive Officer—David Leland
Sales Manager—Robert J. Owens
Plants: Columbia Falls and Kalispell, Montana
Sales: 406 892-2141

POTLATCH CORPORATION
P.O. Box 3591, San Francisco, California 94119
President & Chief Operating Officer—R. M. Steele
Western Division, Wood Products Group
P.O. Box 1016, Lewiston, Idaho 83501
Vice President—James R. Morris
Panel Sales Mgr.—Gregg L. McKee, Jr.
Plants: Lewiston, Pierce and St. Maries, Idaho;
Bemidji and Cook, Minnesota
Sales: 509 458-4551

PREMIER PLYWOOD CORPORATION
P.O. Box 300, Westfir, Oregon 97492
President—Jack Rowbotham
Sales: 503 782-4286

PUGET SOUND PLYWOOD, INC.
P.O. Box 1378, Tacoma, Washington 98401
Chairman—Lee Bennett
Gen. Mgr. & Sales Mgr.—Charles L. Mintken
Sales: 206 627-4111

ROSBORO LUMBER COMPANY
P.O. Box 20, Springfield, Oregon 97477
General Manager—Paul B. Cole
Sales Manager—Mike Morrissey
Sales: 503 746-8411

ROSEBURG LUMBER COMPANY
P.O. Box 1088, Roseburg, Oregon 97470
President & CEO—John J. Stephens
Gen. Sales Manager—Charles S. Gardiner
Plant: Coquille, Oregon
Sales: 503 679-3311

ST. REGIS PAPER CORPORATION
P.O. Box 1593, Tacoma, Washington 98401
Vice Pres. & Gen. Mgr. of Operations, Lumber/Plywood Division—Michael Flannery
Sales Office:
1019 Pacific Avenue, Tacoma, Washington 98402
Director, Marketing & Sales—Howard C. A. Hunter
Plant: Libby, Montana
Sales: 206 572-6178

SANTIAM SOUTHERN COMPANY
Division of Willamette Industries, Inc.
P.O. Drawer 1100, Ruston, Louisiana 71270
Gen. Mgr., Southern Building Products—D. J. Young
Southern Division Sales Manager—Clayton Barns
Sales: 318 255-6258

SCOTCH PLYWOOD CO. OF ALABAMA
Fulton, Alabama 36446
President—Thomas H. O'Melia, Jr.
Sales Manager—F. E. Powell
Sales: 205 636-4424

SIMPSON TIMBER COMPANY
900 Fourth Avenue, Seattle, Washington 98164
President—F. C. Moseley
Third & Franklin, Shelton, Washington 98584
Vice Pres. & Gen. Mgr., Northwest Operations—T. R. Ingham, Jr.
Marketing Mgr., Panel Products—John J. White
Plants: Shelton and McCleary, Washington; Albany, Oregon
Sales: 206 426-3381

SOUTH COAST LUMBER CO.
Plywood Division
P.O. Box 820, Brookings, Oregon 97415
President—William Fallert
Sales Manager—Dan Froehle
Sales: 503 469-5022

SOUTHERN OREGON PLYWOOD, INC.
Division of Medford Corporation
605 S.E. J Street, Grants Pass, Oregon 97526
Vice President, Operations—Robert Kellso
Sales Manager—R. E. Atterbury
Sales: 503 779-1581

SOUTHWEST FOREST INDUSTRIES
P.O. Box 7548, Phoenix, Arizona 85011
Exec.Vice President—Donald A. Graves
Manager, Plywood Sales—William R. Doyle
Plants: Albany,Grants Pass and White City, Oregon
Sales: 602 264-1147

STEVENSON CO-PLY, INC.
P.O. Box F, Stevenson, Washington 98648
President—Jack Bell
Gen. Mgr. and Sales Mgr.—Robert Barnes
Sales: 509 427-5621

TEMPLE-EASTEX INCORPORATED
P.O. Drawer N, Diboll, Texas 75941
Group Vice President, Building Products Division—Harold Maxwell
Prod. Sales Mgr.—Ray Skinner
Plant: Pineland, Texas
Sales: 713 829-5511

TEXTURED FOREST PRODUCTS, INC.
P.O. Box 125, Washougal, Washington 98671
General Manager—Gene Weber
Sales: 206 835-2164

TIMBER PRODUCTS COMPANY
P.O. Box 1669, Medford, Oregon 97501
General Manager—Joseph H. Gonyea
Director of Sales—L. J. Moore
Sales: 503 747-4577 800 547-9520

TIM-PLY-CO
P.O. Box 1669, Medford, Oregon 97501
General Manager—Joseph H. Gonyea
Director of Sales—L. J. Moore
Sales: 503 747-4577 800 547-9520

UNION CAMP CORPORATION
Building Products Division
P.O. Box 38, Chapman, Alabama 36015
Plywood Sales Manager—Fred Faircloth
Sales: 205 376-2241

WARM SPRINGS FOREST PRODUCTS INDUSTRIES
P.O. Box F, Warm Springs, Oregon 97761
General Manager—Robert W. Macy, Sr.
Sales: 503 553-1131

WEYERHAEUSER COMPANY
Tacoma, Washington 98477
Group Vice President, Wood Products—Lynn Endicott
Plants: Livingston and Millport, Alabama; Mountain Pine and Dierks, Arkansas; Philadelphia, Mississippi; Grayling, Michigan; Plymouth and Jacksonville, North Carolina; Wright City, Oklahoma; Klamath Falls, Springfield and North Bend, Oregon; Longview & Snoqualmie, Washington
Sales: Southern Trading Center
P.O. Box 1060, Hot Springs, Arkansas 71901
501 624-5631
Western Trading Center
Tacoma, Washington 98477
206 924-5917

WHITE CITY PLYWOOD COMPANY, OREGON LTD.
6360 Agate Road, White City, Oregon 97501
General Manager—Joseph H. Gonyea
Director of Sales—L. J. Moore
Sales: 503 747-4577 800 547-9520

WILLAMETTE INDUSTRIES, INC.
First National Bank Tower
1300 S.W. Fifth Ave., Portland, Oregon 97201
President, Chief Exec. Officer & Chief Oper. Officer—William Swindells, Jr.
P.O. Box 907, Albany, Oregon 97321
Vice President, Sales—Richard E. Davis
Plywood Sales Manager—Eugene Walters
Plants: Sweet Home, Lebanon, Springfield, Foster and Dallas, Oregon; Taylor, Louisiana; Emerson, Arkansas
Sales: 503 926-7771

WILLAMETTE INDUSTRIES, INC.
Dodson Division
P.O. Box 98, Dodson, Louisiana 71442
General Manager, Southern Building Products D. J. Young
Southern Division Sales Manager—Clayton Barns
Sales: 318 255-6258

WOODKRAFT DIVISION
Georgia Kraft Co.
P.O. Box 2489, Peachtree City, Georgia 30269
General Sales Manager—James J. Davis
Plywood Sales Manager—David L. Adams
Plant: Madison, Georgia
Sales: 404 487-8666

Mill Names and Numbers

Note: Missing numbers are unassigned.

1	Fort Vancouver Plywood Company
2	Peninsula Plywood, Div. of ITT-Rayonier, Inc.
5	Georgia-Pacific Corporation
9	Champion International Corporation
10	Simpson Timber Company
11	Simpson Timber Company
16	Puget Sound Plywood, Inc.
18	Georgia-Pacific Corporation
20	Evans Products Company
22	Champion International Corporation
25	Weyerhaeuser Company
30	Simpson Timber Company
46	Southern Oregon Plywood, Inc.
50	North Pacific Plywood, Inc.
54	Multnomah Plywood Corporation
57	Timber Products Company
59	Premier Plywood Corporation
60	Mt. Baker Plywood Inc.
62	Astoria Plywood Corporation
69	International Paper Company
78	South Coast Lumber Company
79	Hardel Mutual Plywood Corporation
80	Weyerhaeuser Company
84	Lang & Gangnes Corporation—Medply
104	Stevenson Co-Ply, Inc.
108	Coos Head Timber Company
119	Georgia-Pacific Corporation
128	Linnton Plywood Association
134	Bohemia Inc.
138	Champion International Corporation
146	Bingen Plywood Company
159	Willamette Industries, Inc.
161	Weyerhaeuser Company
164	American Forest Products Company
172	Champion International Corporation
173	Rosboro Lumber Company
182	Medford Corporation
185	Boise Cascade Corporation
189	White City Plywood Company
190	St. Regis Corporation
193	Weyerhaeuser Company
200	Georgia-Pacific Corporation
202	Fourply Inc.
204	Boise Cascade Corporation
208	Idaho Veneer Company
209	Kirby Forest Industries, Inc.
210	Willamette Industries, Inc.
211	Willamette Industries, Inc.
212	Willamette Industries, Inc.
214	Willamette Industries, Inc.
215	Potlatch Corporation
216	Weyerhaeuser Company
217	Plum Creek Timber Company
219	Boise Southern Company
220	Georgia-Pacific Corporation
221	Boise Southern Company
223	Scotch Plywood Company of Alabama
225	Weyerhaeuser Company
227	Santiam Southern Company
230	Georgia-Pacific Corporation
233	Willamette Industries, Inc.
236	Weyerhaeuser Company
244	Georgia-Pacific Corporation
245	Willamette Industries, Inc.
246	Boise Cascade Corporation
249	Georgia-Pacific Corporation
251	Boise Cascade Corporation
252	Boise Cascade Corporation
256	MacMillan Bloedel Inc.
257	Great Southern Plywood Company
262	Union Camp Corporation

(Continued next page)

Mill Names and Numbers

Note: Missing numbers are unassigned.

264	Louisiana-Pacific Corporation
265	Medford Corporation
266	Southwest Forest Industries
267	Southwest Forest Industries
269	Warm Springs Forest Products Industries
271	Georgia-Pacific Corporation
277	International Paper Company
281	Georgia-Pacific Corporation
282	Georgia-Pacific Corporation
283	Louisiana-Pacific Corporation
284	TIM-PLY-CO
285	Boise Cascade Corporation
286	Southwest Forest Industries
288	Manville Forest Products Corporation
289	Weyerhaeuser Company
292	Weyerhaeuser Company
293	Louisiana-Pacific Corporation
294	Weyerhaeuser Company
295	Owens-Illinois, Inc.
298	Georgia-Pacific Corporation
299	Weyerhaeuser Company
300	Weyerhaeuser Company
304	Potlatch Corporation
309	Potlatch Corporation
314	Champion International Corporation
315	Kogap Manufacturing Company
319	Crown Zellerbach
320	Temple-Eastex Incorporated
322	Kirby Forest Industries, Inc.
323	Georgia-Pacific Corporation
324	Georgia-Pacific Corporation
325	Southwest Forest Industries
326	Southwest Forest Industries
329	Georgia-Pacific Corporation
330	Miller Redwood Company
331	Custom Panel, Inc.
332	Textured Forest Products, Inc.
334	Weyerhaeuser Company
337	Louisiana-Pacific Corporation
338	Boise Cascade Corporation
340	Georgia-Pacific Corporation
343	International Paper Company
344	Woodkraft Division Georgia Kraft Company
345	Willamette Industries, Inc.
346	Louisiana-Pacific Corporation
347	Plum Creek Timber Company, Inc.
348	Georgia-Pacific Corporation
349	Kirby Forest Industries, Inc.
350	Forestply Industries, Inc.
351	Coastal Lumber Company
352	Georgia-Pacific Corporation
353	Potlatch Corporation
354	International Paper Company
355	Elmendorf Board Corporation
357	Louisiana-Pacific Corporation
358	Georgia-Pacific Corporation
360	Boise Cascade Corporation
361	Weyerhaeuser Company
362	Gregory Timber Resources, Inc.
363	Manville Forest Products Corporation
364	Custom Panel, Inc.
365	International Paper Company
366	Potlatch Corporation
367	Roseburg Lumber Company
368	Louisiana-Pacific Corporation
369	Beaumont Plywood Corporation
370	Louisiana-Pacific Corporation
371	Pelican Spruce Mills Ltd.
372	Bohemia Inc.
373	MacMillan Bloedel Ltd.
374	Hunt Plywood Company, Inc.

Form No. V800J/Revised March 1984/2000

Evans Products Co.,
Aberdeen, WA, May 7, 1984.

John J. Salmon,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, DC.

David C. Davis,
Vice President and General Manager, Evans Products Co., Harbor Mill, Aberdeen, WA.

Submitted in behalf of my employer, Evans Products Company.

I am writing in support of Congressman Don Bonker's H.R. 5182. It is ludicrous to allow cedar plywood siding to be imported from Canada under the classification of "building board". The product is plywood and should be classified as such.

Yours truly,

David C. Davis,
Vice President, Forest-Fiber Group.

Statement of John B. Rehm, Counsel, on Behalf of MacMillan Bloedel Ltd., Vancouver, British Columbia, Canada

H.R. 5182 is objectionable for the following six reasons and should therefore be disapproved by the Subcommittee on Trade and the Committee on Ways and Means:

1. It is based on a misunderstanding of the provisions in the Tariff Schedules of the United States concerning building boards.
2. It purports to close a "loophole" that is, in fact, nonexistent.
3. It would prejudge an issue now before the U.S. Court of International Trade.
4. It would violate U.S. obligations under the General Agreement on Tariffs and Trade (GATT) and injure other U.S. industries.
5. It is not justified on economic grounds.
6. It is, despite the claim to the contrary, protectionist in nature.

H.R. 5182 was introduced by Congressman Bonker (D-Wash.) on March 20, 1984. Congressman Bonker explained the bill in his statement that was printed at page E1086 of the March 20, 1984, Congressional Record. A copy of that statement is attached.

The Tariff Schedules of the United States (TSUS) provide for softwood plywood in item 240.21. The TSUS also contain two provisions covering building boards—items 245.80 and 245.90. Item 245.80 covers laminated boards, and items 245.90 covers other boards made from vegetable fibers. It is reasonably clear from Congressman Bonker's statement that his bill is directed against item 245.80 and not item 245.90, particularly since it refers only to the date of duty applicable to item 245.80. The rate of duty under item 240.21 is 20 percent, while the rate of duty under item 245.80 is effectively 10 percent according to Congressman Bonker's statement.

In the case of MacMillan Bloedel, the product in question is an exterior-grade, cedar-faced siding panel that is edge-worked, as by being shiplapped. The cedar facing provides durability against exposure to various weather conditions. The edge-worked joint affords a weather-tight joint between panels. The face of the panel is texturized to provide a rough sawn appearance, and it is grooved at intervals for decorative purposes to simulate the appearance of boards. The product is used almost entirely as exterior siding on walls of houses. It is no longer plywood, and it is not saleable or useable for the applications for which plywood is typically used.

Against this background, the bill is objectionable for the following six reasons.

First, the bill is based upon a misunderstanding of item 245.80, which covers laminated building boards. As defined in headnote 1(e) of part 3 of schedule 2 of the TSUS, building boards are panels of rigid construction that are "chiefly used in the construction of walls, ceilings, or other parts of buildings". Therefore, mere edge-working of plywood does not in and of itself qualify the plywood as laminated building boards. The U.S. Customs Service (Customs) must determine that the edge-worked plywood is chiefly used in the construction of parts of buildings. As noted above, MacMillan Bloedel's product is significantly different from plywood and satisfies all the criteria for classification as building boards.

Second, the bill purports to close a "loophole" that is, in fact, nonexistent. Plywood that has been edged and that is chiefly used in the construction of parts of buildings has been classified as building boards since 1968. In fact, Customs has issued several formal rulings since 1968 classifying such plywood as building boards. Reliance upon such Customs' rulings over a period of about 16 years hardly constitutes the exploitation of a "loophole".

Third, the bill would prejudge an issue that is now before the U.S. Court of International Trade (CIT). On August 25, 1983, the American Plywood Association (APA) filed with the CIT a complaint against the U.S. Government, taking the position that the edge-worked plywood should be classified not as building boards but as plywood. The U.S. Government filed its answer to the complaint on October 31, 1983. Since then, APA has engaged in pre-trial discovery. MacMillan Bloedel is a party in interest in the action. Trial is not expected for several months, and the CIT is not likely to issue its decision before the fall of 1984. The Congress should therefore defer any action until the courts have finally resolved the issue.

Fourth, the bill would violate the General Agreement on Tariffs and Trade (GATT) and thereby injure other U.S. industries. The rate of duty in item 245.80 is bound in the U.S. Schedule XX to the GATT. That is, the United States has undertaken a formal international obligation not to change that rate except in accordance with specific procedures prescribed by the GATT. Since H.R. 5182 would not comply with such procedures, it would violate the U.S. obligation. Such violation would cause other U.S. industries to suffer. The United States would either have to pay compensation in the form of reduced duties on imports or suffer retaliation in the form of increased duties on exports.

Fifth, the bill is not justified on economic grounds. Although Canadian imports under item 245.80 have increased in recent years, they remain an insignificant portion of domestic consumption. According to the International Trade Commission, Canadian imports of all softwood plywood have traditionally accounted for less than 1 percent of domestic consumption. In the case of edge-worked plywood classified under item 245.80, which is typically softwood plywood, there is good reason to believe that Canadian imports are well under 1 percent of domestic consumption—and perhaps as little as one tenth of 1 percent. Such imports could not possibly cause or threaten injury to the domestic industry.

Sixth, the bill is, despite the claim to the contrary, protectionist in nature. In his statement, Congressman Bonker asserts that the bill "should not be regarded as protectionist". Yet is would double the rate of duty on building boards, and it would do so in opposition to 16 years of consistent Customs' rulings, in violation of U.S. obligations under the GATT, and without the slightest economic justification. On this basis, it would be hard to find a bill that better typifies protectionism.

This statement is submitted on behalf of MacMillan Bloedel Ltd. by its Washington, D.C., counsel, John B. Rehm, Busby, Rehm and Leonard, P.C., 1629 K Street, N.W., Suite 1100, Washington, D.C. 20006 (202) 857-0700.

Attachment.

[From the Congressional Record, Mar. 20, 1984]

Plywood Tariffs

HON. DON BONKER OF WASHINGTON, IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 20, 1984

MR. BONKER. Mr. Speaker, I am today introducing legislation to close a loophole in the U.S. tariff schedule that is needlessly and unfairly costing jobs in the Pacific Northwest wood processing industry. Left uncorrected, the job toll stemming from this problem will steadily increase.

Certain plywood sheets are being exported by Canada to the United States as building boards rather than as plywood under the U.S. tariff schedule. This subjects such Canadian exports to a much lower tariff schedule, making the products cheaper than comparable plywood produced in the United States. The tariff category called building boards was aparently intended to be a residual one for special-use construction panels that might not fall into either plywood or wood veneer panel categories.

Instead, it has become a loophole category. By simply altering the edge of a plywood sheet, foreign producers are able to get their products categorized as building boards, qualifying for the dramatically lower tariff treatment. In theory, the edgework dedicates the sheet to some unspecified special construction use. In fact, the use of such sheets is no different than plywood sheets with plain edges.

My legislation would revise the building board category to insure that it is used only for special-use panels, and not for plywood. This revision makes the U.S. tariff schedule for these products conform more closely to the international code, which contains no building board category at all. Maintenance of a building board category in the U.S. code would only frustrate efforts to insure internationally recognized tariff categories, and continue to damage our own wood products industry.

While the tariff on plywood is a flat 20 percent, the so-called building boards, used as plywood, are exported subject to a tariff of 1.9 cents per pound plus 3.4 percent. The plywood industry estimates that this schedule equals a flat 10 percent tariff. Under the U.S. tariff schedule, even that will continue to decrease dramatically.

While the volumes imported from Canada under this category represents only a portion of plywood products marketed in the United States, the volume jumped an alarming 74 percent in 1982. My greatest concern is, as the tariff schedule decreases, the practice of exporting plywood under the building board category may spread to all forms of plywood exported by Canada to the United States. Such a practice would be devastating to our industry.

Mr. Speaker, the wood products industry has been and remains committed to free and fair international trade, despite its losses due to numerous unfair trade practices by foreign competitors. For example, the industry strongly supports further mutual tariff reductions through negotiations with our trrading partners to reduce artificial international trade barriers. The legislation I am introducing should not be regarded as protectionist or a reversal of the industry's free trade position. Rather, this bill brings the U.S. tariff schedule into closer conformity with international standards, restoring equal treatment of plywood products in the U.S. market for both foreign and domestic producers. For this reason, the legislation has the specific support and endorsement of the American Plywood Association, which represents both small and large U.S. plywood producers.

I am hopeful, Mr. Speaker, that the Committee on Ways and Means will promptly seek Executive comment on this proposal and include it in the group of miscellaneous tariff bills that it recommends favorably to the House for passage before the end of this Congress.

H.R. 5206

To authorize the imposition of additional duties on swine and pork products of Canadian origin in order to offset competitive advantages resulting from any government subsidy that may be provided to Canadian swine producers.

See also comments of the U.S. Council for an Open World Economy, Inc., at p. 342.

Statement of John C. Datt, Secretary and Director, Washington Office, the American Farm Bureau Federation

This is in response to Chairman Gibbons' request for written testimony on certain tariff and trade bills. Farm Bureau appreciates the Chairman's invitation and below are our comments on three of the bills that are of interest to our organization.

H.R. 5206, IMPOSITION OF ADDITIONAL DUTIES ON SWINE AND PORK OF CANADIAN ORIGIN

Congressmen Bedell and Harkin of Iowa have introduced H.R. 5206, a bill to authorize the imposition of additional duties on swine and pork products of Canadian origin in order to offset subsidies that are allegedly provided to Canadian swine producers.

Hogs and pork products flow both ways across the U.S./Canadian border. However, in recent years, the balance of trade in pork and prok products has grown to be in favor of the Canadians.

Under the provisions of H.R. 5206, the Secretary of Agriculture would be required to determine if Canadian hog producers benefit from subsidies or grants greater than the level of such subsidies or grants provided to swine producers in the United States (grain subsidies, low cost FmHA loans, etc.).

If the finding is affirmative, the amount of the excess benefit accruing to Canadian producers or processors would be imposed and collected in the form of additional import duties by the U.S. Customes Service on articles within each swine products category from Canada.

We are advised by the U.S Trade Representative's (USTR) office that the provisions of H.R. 5206 are not consistent with the United States' obligations under the GATT. Both the United States and Canada are signatories of the GATT Subsidy Code. Under that Code, no signatory can raise duties on imports unless material injury to the involved industry (pork) has been determined under established procedures.

USTR says that Canada would retaliate against U.S exports if the United States were to violate the injury test provided under the GATT Subsidy Code. The U.S. exports about $1.8 billion worth of farm products to Canada annually. The United States imports about $1.5 worth of Canadian agricultural products each year.

We understand the Administration will oppose H.R. 5206 as inconsistent with U.S. obligations under the GATT.

Farm Bureau policy states:

"Farm Bureau will oppose protectionist legislation, such as domestic content legislation, which if enacted by the U.S. Congress and signed by the President, would result in retaliation against U.S. farm exports or a request for 'compensation' under established trading rules."

Therefore, since this bill would result in retaliation against U.S. farm exports to Canada, Farm Bureau must also oppose H.R. 5206.

H.R. 5449, A BILL TO PROVIDE FAST-TRACK TREATMENT OF IMPORTED PERISHABLE AGRICULTURAL PRODUCTS

Farm Bureau strongly supports this bill introduced by Congressman Barber Conable on April 14, 1984.

The producers of perishable agricultural commodities and products find that existing import relief laws cannot give them relief quickly enough to avoid considerable injury between the time a petition is submitted, a case is heard and a decision is rendered. The shorter the season, the more acute is this problem. Some perishable commodities come to market within a very short season. Therefore, producers of perishable commodities have seldom exercised their rights under existing import relief laws.

The first effort to address this problem legislatively was in the Caribbean Basin Economic Recovery Act, which was passed by the Congress to give relief within 21 days under a fast-track provision. The Conable bill, H.R. 5449, is a modified form of the fast-track provision of the Caribbean Basin Economic Recovery Act.

Under this bill, parties alleging injury from imports of perishable products would file a petition with the International Trade Commission pursuant to Section 201 of the Trade Act of 1974. The petition could also be filed with the Secretary of Agriculture with a request for emergency relief.

Relief could be obtained within 21 days if findings were positive and the President acted, as is the case under the Caribbean Basin law.

We believe that H.R. 5449 is consistent with the United States' obligations under the GATT and offers the best means of providing faster import relief to producers of short season, perishable farm commodities and products. Such products are defined as live plants, fresh or chilled vegetables, fresh mushrooms, fresh fruit, cut flowers and concentrated citrus fruit juice.

H.R. 5454, TO EXTEND DUTY-FREE TREATMENT TO CERTAIN TRACTOR PARTS

Farmers are heavily dependent on tractor power to carry out their farming operations. Farm production inputs continue to increase in price for most items; this is especially true of automotive and tractor parts.

Since farmers must pay the asking price for production inputs, including spare parts, and have no control over the prices received for their commodities and products, they must be very cost conscious.

Therefore, Farm Bureau strongly supports H.R. 5454, which extends duty-free treatment to certain tractor parts.

We will appreciate consideration of our views on these tariff and trade bills.

H.R. 5228

To authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements.

See comments of the U.S. Council for an Open World Economy, Inc., at p. 342.

STATEMENT OF CARL H. PRIESTLAND, CHIEF ECONOMIST, AMERICAN APPAREL MANUFACTURERS ASSOCIATION

SUMMARY

The American Apparel Manufacturers Association opposes the passage of H.R. 5228 which would allow the President to accelerate the staged rate reductions in tariffs as set in the Trade Act of 1974. The apparel industry is currently highly impacted by imports and the strong dollar continues to improve the competitive price position of imported apparel. Apparel imports increased 15 percent in 1983 and are increasing at 30 percent for the first quarter of 1984. Increased tariff reductions would only further compound the import problem faced by the U.S. apparel industry.

STATEMENT

American Apparel Manufacturers Association opposes the passage of H.R. 5228 which would allow the President to accelerate the staged rate reductions in tariffs provided in the Trade Act of 1974 and negotiated during the Tokyo Round.

In the case of apparel, the phase-in of tariff reductions was delayed two years since the industry was being disrupted by imports at that time. The then current Administration undertook to control apparel imports more stringently, but in spite of its efforts imports continued to expand at a rate far greater than the growth in domestic apparel consumption. As a result, the level of import penetration expanded and domestic apparel production and employment declined.

In just the past three years, 1981–1983, apparel imports increased about 25 percent in both dollar terms and physical quantities. During this same three years the U.S. market for apparel did not increase and domestic production declined. Apparel employment fell approximately 10 percent during the 1981–82 recession and, although the industry has improved somewhat in 1983, employment is still 50,000 below the pre-recession level. The government has not been able to control the level of imports and our market is being disrupted by the current surge in imports. It is difficult to cope with the level of imports now. Accelerating the tariff cut will only increase the competitive position of imported garments.

The current situation in the apparel industry also is being aggravated by the strong dollar which has made it possible to import more at the same cost, while weakening the U.S. export position. Today is not the time to add to the apparel industry's problems by increasing the competitiveness of imports through accelerating tariff reductions.

Finally, it should be noted that the Trade Act of 1979 requires a snap-back to pre-Tokyo Round tariffs if during the course of the phase-in tariff reductions on apparel and textiles the MFA or a suitable substitute is not in being. Once final rates are in place the snap-back is no longer applicable. Because this provision encourages the continuation of an international agreement covering trade in apparel and textiles, it is critical that the timing of the phased-in tariff reductions not be accelerated.

STATEMENT OF THE AMERICAN DEHYDRATED ONION & GARLIC ASSOCIATION (ADOGA)

SUMMARY

The American Dehydrated Onion & Garlic Association (ADOGA) comprised by the four leading dehydrators of domestically grown onions and garlic are opposed to HR 5228 providing the President with authority to accelerate the staged tariff concessions in trade agreements. ADOGA member firms recommend that the proposed legislation be dropped or that TSUS 140.60 dehydrated onions be excluded from the accelerated reductions for the following reasons:

Commodities with staged tariff reductions such as dehydrated onions are all "sensitive" to foreign competition. HR 5228 will cause some needless injury to impacted domestic industries.

This is a serious "breach of promise" by the U.S. government, disrupting the staged tariff reductions painfully negotiated under the multilateral Tokyo Round and other bilateral trade agreements.

Under the Tokyo Round the staged reductions cover only eight years, beginning with January 1, 1980. According to OECD analysts the reductions, accelerated by one year, increase on the average from 4.5 percent to 7 percent. In the case of TSUS 140.60 dehydrated onions the staged reductions would be accelerated from an annual 1.25 to 1.875 percentage points as the three remaining years are condensed into two years. It just isn't worth the effort to change the rate of reduction in midstream.

The effort of HR 5228 is mainly psychological. Its purpose is to stimulate world trade. Obviously with its expanding trade deficit, the United States doesn't require more stimulation of imports.

U.S. exports won't be stimulated since most other countries won't take similar action to open thir markets, faced with continued recession, high unemployment and requirements of IMF loans.

HR 5228 will accomplish nothing beneficial for the U.S. eocnomy.

STATEMENT

The American Dehydrated Onion and Garlic Association (ADOGA) is comprised of the four leading dehydrators of onions and garlic in the United States. Member firms are appalled and dismayed at all of this tampering with the Tariff Schedules of the United States by the Administration and the Congress. ADOGA advises against the passage of H.R. 5228, which would have an immediate impact on the most important product of this agricultural industry, dehydrated onions, and, following harmonization with the Brussels Nomenclature, scheduled for 1985, on onion flour as well.

DESCRIPTION OF THE INDUSTRY

This is a relatively small specialized agricultural industry generally concentrated in California. ADOGA member firms operate six processing plants, all in rural communities, five in California and one plant in nearby Nevada. Seed operations extend into the states of Oregon and Arizona. The majority of ADOGA's farmer-suppliers, from 80 to 90 percent under contract, are in California. According to the U.S. Department of Agriculture in recent years about 25,000 to 30,000 acres of onions for processing have been planted and harvested annually with an average farm value of $59 million. Acreage for garlic averages about 15,000 with a farm value of close to $36 million in 1981, the last year the crop was surveyed. That year with a relatively short crop, farmers received an average price of $21.80 per 100 lbs. of garlic sold, primarily to processors.

In 1983 ADOGA member firms reported an output of 146.9 million pounds of dehydrated onions and 44.7 million pounds of dehydrated garlic. The purchases of raw product accounted for approximately 80 percent of California's summer onion crop in 1983 and about 50 percent of the California garlic crop in 1981.

In 1983 ADOGA firms employed 3,500 workers in onion processing operations with a payroll of $42 million. Close to 1,000 employees were engaged in garlic processing. That payroll ran over $11.5 million. Hired farm hands for field work in this industry are unskilled, poorly educated, generally Hispanic workers, who know little else besides farm labor. Prevailing wage rates for hired farm workers in California in the mid-July week in 1983 averaged $4.42 an hour; field work averaged $4.12 an hour. Comparable figures for the United States are $3.54 and $3.38 an hour, respectively, according to the U.S. Department of Agriculture.

Dehydrated onions and dehydrated garlic are primarily industrial products. About 80 percent of the industry's dehydrated output is sold to industrial users: namely, food processors and the food service industry, where the products are used as seasonings and food flavorings. About 20 percent of the output reaches the retail consumer, usually packaged and distributed by spice manufacturers.

H.R. 5228 WILL INCREASE UNFAIR TRADE

While this is a relatively small agricultural industry, it has a significant impact upon the economies of the rural communities where the plants are the major employers and upon the farmer-suppliers located throught the State of California. Rising imports from low wage low cost countries can only have a devastating impact upon this industry, which finds itself unable to compete fairly with heavily subsidized imports or with imports from nonmarket countries, which fix prices for political purposes without regard to costs. The U.S. tariffs have served to reduce the gap between U.S. price levels and such imports.

THE TOKYO ROUND

Under the Tokyo Round some 98 countries agreed to reduce or eliminate trade barriers. Concessions on most commodity tariffs had been negotiated during previous GATT agreements. During the Tokyo Round the tariff concessions, if any, were negotiated among the "sensitive" commodities by staging the tariff reductions gradually over 8 years. The purpose of the staged reductions was to allow the affected industries some time to adjust to the increasing competition from foreign goods. To judge from the expanding U.S. trade deficit, foreign goods have been flooding this country in recent years. Accelerating the tariff concessions on "sensitive" commodities, the aim of H.R. 5228, will add to this influx of imports. It is advertising to the world that the United States is seeking more foreign goods.

The Tokyo Round multilateral trade agreements were signed but five years ago with the staged reductions in tariffs beginning January 1, 1980. ADOGA members are more dismayed over the broken promise, the midstream change of laws, than they are worried about the speeding up of the tariff reduction for their products although this could have a serious impact.

THE TARIFF ACCELERATION

The present tariff on dehydrated onions, ADOGA's principal product, is 28.8 percent, ad valorem, a staged reduction from 35 to 25 percent ad valorem agreed to during the Tokyo Round. Accelerating this 1.25 percentage points reduction by one year increases the percentage points to 1.875, reaching the tariff level of 25 percent by January 1, 1986 instead of 1987.

PROPOSAL HAS LITTLE EFFECT ACCORDING TO OECD

There have been various news accounts of the recent annual two-day meetings in Paris of the 24 industrialized nations, members of the Organization for Economic Cooperation and Development (OECD). The foreign and finance ministers in attendance, agreed to several actions to improve world-wide wide trade, one of which was to accelerate the staged tariff concessions of the Tokyo Round. The OECD's Secretary General Emile van Lennep admitted that the new measures agreed upon were largely symbolic at this stage. But they marked the group's determination to disassemble trade barriers. Of the tariff acceleration it was noted as being psychological and having little actual effect on world trade.

It is really necessary for the United States to engage in psychological actions as in H.R. 5228 in order to attract more imports to this desirable market? It would be far more beneficial to world trade to stabilize floating currency exchange rates.

INDUSTRY'S FUTURE IS BLEAK

ADOGA firms foresee a gloomy future for their small, highly specialized agricultural industry: A relatively stable domestic market with be eroded by an influx of subsidized low-cost imports, encouraged by policies of the U.S. government; lagging foreign sales inhibited by the strong dollar and growing foreign competition among other factors.

RECOMMENDATIONS

ADOGA member firms recommend, therefore, that this proposed legislation H.R. 5228 be withdrawn from consideration or that TSUS 140.60 dehydrated onions be spared the acceleration of its staged reductions by excluding it from the bill.

Statement of the American Fiber/Textile/Apparel Coalition

The statement is presented on behalf of the 21 members of the American Fiber/Textile/Apparel Coalition (AFTAC), a group of trade associations and labor unions which make up the domestic fiber, textile and apparel industries. The members include:

Amalgamated Clothing & Textile Workers Union; American Apparel Manufacturers Association; American Textile Manufacturers Institute; American Yarn Spinners Association; Carpet and Rug Institute; Clothing Manufacturers Association of America; Industrial Fabrics Association; International Ladies Garment Workers Union; Knitted Textile Association; Luggage and Leather Goods Manufacturers of America; Man-Made Fiber Producers Association; National Association of Hosiery Manufacturers; National Association of Uniform Manufacturers; National Cotton Council of America; National Knitwear & Sportswear Association; National Knitwear Manufacturers Association; National Wool Growers Association; Neckwear Association of America; Northern Textile Association; Textile Distributors Association; and Work Glove Manufacturers Association.

The products manufactured by the coalition members include synthetic and natural fibers, yarns, fabrics, manufactured textile products, garments and other products whose chief characteristics are textiles. Most of these products will be negatively impacted by H.R. 5228 which proposes to accelerate the tariff reductions negotiated during the Multilateral Trade Negotiations (MTN). Therefore, the member organizations of AFTAC oppose this legislation.

The American textile/apparel industry has long been recognized as one that is adversely impacted by imports. For that reason the U.S. government has participated in a number of international agreements providing for orderly trade in textiles and apparel. Also, the U.S International Trade Commission, prior to the tariff-cutting concessions made during the Multilateral Trade Negotiations examined the probable economic effects of such tariff reductions on textile and apparel products. The result of the ITC investigation was to confirm that in many cases, tariff reductions utilizing the full authority provided in the Trade Act of 1974 would lead to adverse economic effects on the domestic textile and apparel industry and its workers. Nonetheless, many tariff cuts on textiles and apparel were made during the MTN—although in many cases the cuts were less than that called for by the "tariff-cutting formula" used in the negotiations. Many people have argued that the tariff cuts finally agreed to on textiles and apparel were not extremely significant or important because they were not as great in many cases as were the cuts on other manufactured products. We believe that this argument is not correct and a fuller examination is undertaken below since it bears directly on the issues raised by H.R. 5228.

On a trade-weighted basis, the United States' average tariff on textiles and clothing before any MTN cuts was 23.5 percent. After all of the tariff concessions made by the U.S. on these products during the MTN are fully implemented the weighted tariff average will be 19 percent[1] which means that the United States cut its textile and apparel tariffs on average some 4.5 percentage points. This reduction was greater than reductions made by any of our major trading partners. Canada's average trade-weighted reduction on textiles and clothing was 2.5 percentage points; Japan's was 2.5 percentage points and the European Communities average reduction was 3.5 percentage points. Thus, the United States' concessions on textiles and apparel tariffs exceeded those of our trading major partners. Now H.R. 5228 seeks to accelerate those concessions and in return we are told that our major trading partners will probably accelerate their concessions as well. The U.S. textile/apparel industry was the loser in the MTN tariff-cutting exercise and we will be losers in any acceleration of the tariff cuts, for a number of reasons beyond the apparent imbalance of textile apparel concessions that were agreed to during the MTN.

First of all, the domestic textile and apparel industry is in much worse shape today than it was in 1980 when the tariff concessions began to be implemented. In 1980 the textile sector had a favorable balance of trade. Exports amounted to $3.6 billion while imports were $2.7 billion. Today, the reverse is true. In 1983 the textile sector's trade deficit amount to −$1.1 billion with imports having grown some $784 million to $3.5 billion from 1980. During this period imports of textiles increased 77.2 percent from 2.0 billion square yard equivalents (sye) to 3.5 billion sye in 1983. Exports declined some 44.1 percent in quantity terms over this period. Domestic production of textiles has grown only slightly during these four years and employment has declined from 848,000 workers to 744,000.

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[1] Based on data from the GATT Secretariat, Geneva, Switzerland.

The situation is even worse in the apparel sector. Imports of apparel have grown from 2.9 billion sye in 1980 to 3.9 billion in 1983. The trade deficit has worsened from −$5.6 billion to −$9.5/billion and employment has declined from 1,264,000 workers to 1,169,000 workers. Now, with H.R. 5228, the industry is being asked to expose itself further to additional import penetration which can only lead to additional loss of jobs for American workers.

Another compelling reason to oppose this bill is because of its affect on the snapback provision provided in Section 504 of the Trade Agreements Act of 1979. Enactment of H.R. 5228 would lead to a significant loss of negotiating leverage for the United States during the renewal of the Multifiber Arrangement in 1986. The snapback clause states:

"The headnotes to Schedule 3 are amended by adding at the end thereof the following new headnote:

"8. In the case of each item in this schedule and schedule 7 on which the United States has agreed to reduce the rate of duty, pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 before January 3, 1980, on any cotton, wool or manmade fiber textile product as defined in the Arrangement Regarding International Trade in Textiles, as extended on December 14, 1977 (the Arrangement), if the Arrangement, or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, ceases to be in effect with respect to the United States before the total reduction in the rate of duty for such item under sections 101 and 109 of the Trade Act of 1974 has become effective, then the President shall proclaim the rate of duty in rate column numbered 1 for such item existing on January 1, 1975, to be the rate of duty effective, with respect to articles entered, or withdrawn from warehouse, for consumption, within 30 days after such cessation and until the President proclaims the continuation of such reduction under the next sentence. If subsequently the Arrangement, or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, is in effect with respect to the United States, then the President shall proclaim the continuation of the reduction of such rate of duty pursuant to such trade agreement. For purposes of section 109(c)(2) of the Trade Act of 1974, any time when a rate of duty existing on January 1, 1975, is in effect under this headnote shall be time when part of such reduction is not in effect by reason of legislation of the United States or action thereunder."

This means that any tariff cut negotiated in the MTN which has not yet been fully implemented will snap back to its rate on January 1, 1975 if there is no Multifiber Arrangement or other substitute agreement governing trade in textiles and apparel in effect. When the present Multifiber Arrangement expires in July 1986 nearly all of the tariff rate reductions on textiles and apparel will have been completed if the tariff cuts are accelerated as proposed in H. R. 5228. This means that the U.S. will have forfeited a huge amount of negotiating leverage in renegotiating the Multifiber Arrangement if the provisions of H. R. 5228 are adopted.

Based on the import statistics of the past four years which we have provided above, it is obvious that a new international arrangement is needed which will considerably strengthen the existing arrangement. However, if H. R. 5228 is adopted the U.S. will have given up a tremendous weapon in its arsenal, namely the snapback clause, in obtaining the needed changes in the Multifiber Arrangement.

Another reason that these tariff cuts should not be accelerated is that exchange rate changes which have taken place during the four years since the tariff cuts have begun have eroded much of the protection afforded by tariffs. Because of the strengthening of the dollar during this period, we estimate that on a trade-weighted basis, the exchange rate impact has been essentially to double the price of our exports and to diminish the import prices of textile and apparel by some 40 percent.[2] This Administration has pursued fiscal and monetary policies aimed at purposely producing an over-valued dollar in order to increase imports from the developing countries with large foreign debt. Now with H. R. 5228, the Administration is seeking to further reduce the level of protection which this industry was provided by accelerating the MTN tariff reductions.

Finally, we believe that H.R. 5228 violates commitments made by the Administration which concluded the MTN tariff reductions, commitments which that Administration made to the Congress and to the domestic textile and apparel industry. We would like to include in our statement an exchange which took place while the tariff cuts were being explained during the debate on the passage of the Trade Agreements Act of 1979. The Executive Branch through Ambassador Robert Strauss, then the Special Representative for Trade Negotiations, made its commitment unequivocably clear with respect to staging of tariff cuts. In an exchange with Senator Ribicoff on July 10, 1979, Ambassador Strauss stated that the tariff cuts are to be phased in beginning in two years over an eight-year period. Senator Ribicoff asked, and we quote, "Can the garment industry depend on your statement just given that that is the rate of cut that will be involved and put into place?" Ambassador Strauss replied, and again we quote, "Senator, yes. Let me tell you this. Damned near anybody can depend on a statement I make in a record like this before the Senate." This was taken from hearings before the Subcommittee on International Trade, Senate Committee on Finance, July 10th and 11th, 1979. Part I of II parts, page 400.

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[2] The exchange rate impact on imports is estimated by weighting the exchange rate changes from June 1980 by the quantities of imports from the major suppliers to the U.S. The export impact is obtained the same way using as weights US. exports to our major markets and their exchange rate changes.

Another adverse impact which an acceleration of tariff cuts will have on the government and on the economy will be the reduction in tariff revenue which this acceleration will produce. When all reductions are made, as stated earlier, the average tariff on textiles and apparel on a trade-weighted basis will amount to 19 percent. While it is very difficult to calculate exactly what the tariff revenue loss would be one can estimate its magnitude with, we believe, some reliability. If one assumes that the tariff cuts were made in equal increments over an eight-year period and that the total average trade-weighted tariff cut was 4.5 percent then the average trade-weighted tariff cut each year is 0.64 percent. If one also assumes that textile and apparel imports in 1986 will be $11.6 billion (the value of these imports over the 12 months ending March 1984) then the loss in tariff revenue will amount to about $74 million. This almost certainly underestimates the revenue loss since imports thus far in 1984 are some 49 percent above imports for the same period last year and continued import growth is almost certain given current U.S. trade policies. Nonetheless, let us restate our estimate. We believe that the one-year acceleration in tariff reductions will cost the U.S. Treasury at least $74 million in revenue loss in 1986.

It seems obvious that H.R. 5228 carries too high a price tag. The cost of H.R. 5228 will be lost tariff revenue, lost jobs for U.S. workers, lost leverage in MFA renewal negotiations and the violation of a commitment made by the Executive Branch to the Congress. The benefits can be defined as nothing more than some symbolic gesture against protectionism. This symbolic act carries with it some very real consequences, all of them adverse for the domestic textile and apparel industry. We urge the Subcommittee not to report favorably on H.R. 5228.

Statement of the American Iron & Steel Institute

The American Iron and Steel Institute (AISI) is pleased to present the following comments to the House Ways and Means Trade Subcommittee on H.R. 5228, the "Reciprocal Tariff Reduction Acceleration Act of 1984" (which would authorize an across-the-board acceleration of MTN staged duty reductions). The AISI is the principal trade association of the U.S. steel industry. Its membership includes 57 domestic steel companies accounting for about 86 percent of the raw steel produced in the United States.

In view of the unprecedented import sensitivity of the domestic steel industry at the present time and the fact that reciprocity in terms of steel tariff results was only partially achieved in the Tokyo Round, the AISI strongly urges that all steel products (AIS 1-59) be excluded from H.R. 5228's authority to accelerate MNT tariff reductions.

Steel imports are today at record levels (25.2 percent of the U.S. market in the first quarter of 1984), and it is very clear that import both of steel and of steel-intensive products are already extremely competitive in the U.S. market. Conversely, U.S. exports of steel and steel-intensive products continue to face declining competitive opportunities of markets abroad, due to the persistence of foreign nontariff barriers to trade and to the continuing serious distortion in the exchange rate value of the dollar. Given these circumstances, domestic steel producers are concerned that they would be more likely harmed than helped by any reciprocal acceleration of MTN tariff cuts.

First, we recognize that the situation in steel trade today has reached crisis proportions not because of tariff barriers in the U.S. or other major developed countries, but because of growing foreign government subsidization and protectionism by more indirect means. These problems will in no way be remedied by a reciprocal acceleration of MTN tariff reductions.

Second, neither domestic steel producers nor the ITC (to the best of our knowledge) has undertaken a systematic analysis of the likely effects of such an acceleration. At the present time, domestic steel producers continue in a survival mode in which every dollar counts. Under these conditions, even an acceleration of tariff reductions having only marginal effects would not necessarily be "commercially insignificant" for domestic steel producers.

Third, average U.S. tariffs on steel mill products in the final stage of MTN duty reductions, based on dutiable trade, will still be lower than those of the E.C. and Japan, and only about half as high as those of Canada (see attached table). Thus, it is difficult to see what benefits will accrue to domestic steel producers from accelerating these tariff reductions on a reciprocal basis.

During the Tokyo Round, the U.S. reduced tariffs on steel mill products by an average of 27 percent (to an average rate of 4.4 percent ad valorem), compared to a 16 percent reduction for Japan (to 5.3 percent); a 22 percent reduction for the E.C. (to 5.4 percent); and a 37 percent reduction for Canada (to 8.7 percent). While an acceleration of MTN tariff cuts on steel mill products will not materially affect the end results of the Tokyo Round tariff concessions, it does not appear to be in the best interest of domestic steel producers to accelerate these results.

In conclusion, since the United States now faces a merchandise trade deficit this year which could reach $120 billion, we think the U.S. government should be particularly careful at the present time not to do anything in the trade area which could make the deficit worse. While AISI recognizes that passage of H.R. 5228 is not likely to cause crisis problems in the steel trade area, we fear it could be harmful to domestic steel producers by making steel imports even cheaper at a time when imports are already at record levels. We therefore strongly urge that H.R. 5228 exclude all steel products from coverage under the bill.

TOKYO ROUND TARIFF REDUCTIONS ON STEEL MILL PRODUCTS

	Average applied rate [1]	Depth of cut [1] (percent)	Resulting average rate [1]
EEC	6.9	22	5.4
Japan	6.3	16	5.3
Canada	13.7	37	8.7
United States	6.1	27	4.4

[1] Based on 1976 dutiable trade, weighted by trade in steel mill products with the world.

COMPARATIVE TARIFF ANALYSIS FOR SELECTED STEEL MILL PRODUCTS

TSUS	DESCRIPTION	Imports 1978 Net Tons	1978 A.V.E.	U.S. Tariff Offer	EEC Tariff Offer	Japanese Tariff Offer	Canadian Tariff Offer
606.68‡	Ingots, Blooms, Billets, etc., Carbon, over 5c/lb.	317,178	6.0%	4.2%	3.1%	4.3%	3.6%
606.80‡	Reinforcing Bars, Carbon, over 5c/lb.	109,809	7.5	4.9	4.4	4.9	6.8
606.84‡	Hot Rolled Bars, not Coated or Plated with Metal, over 5c/lb.	586,325	7.0	4.7	4.5	4.9	6.8
606.88‡	Cold Finished Bars, Carbon	141,228	8.5	7.5	5.0	8.2	8.0
607.17‡	Wire Rods, Carbon, not Treated, over 4c/lb.	1,150,804	2.2	1.9	4.9	4.9	1.5
607.65‡	Plates and	2,848,393	7.5	6.0	4.7*	4.9*	6.9*
607.67‡	Sheets, Hot Rolled, Carbon not Pickled	1,930,843	7.5	4.9			
607.83†‡	Plates and	26,648	8.0†	5.1†	6.0*	4.9*	6.3*
607.83†‡	Sheets, Cold Rolled, Carbon	3,805,538					
607.99‡	Tin Plate & Tin Coated Sheets, over 10c/lb.	376,027	4.6	3.5	4.9	4.9	8.0
608.11‡	Plates and	3,531	8.7	5.4	5.3*	4.9*	8.0*
608.13‡	Sheets, Coated, Cargon, over 10c/lb.	2,283,936	8.6	6.5			
609.17	Electric Coated Sheets	95,117	9.5	5.7	5.0	4.9	8.0-10.0
609.41	Round Wire, Carbon, over 0.060" not over 0.25% C	325,315	1.7	1.5	5.2	5.2	6.0
609.80	Angles, Shapes, Sections, Carbon	2,010,380	1.0	0.9	4.4	4.9	0.3
609.98	Sheet Piling, Carbon	126,918	0.9	0.8	4.4	4.9	6.8
610.20	Rails, Carbon	128,981	0.6	0.3	4.4	4.9	6.9
610.32	Welded Pipe and Tubing, Carbon, over 0.375" O.D.	1,729,967	2.2	1.9	10.0	4.9	8.3
610.39	Pipe & Tubing, Carbon, not Welded, not Threaded	418,118	0.6	0.5	10.0	4.9	7.7
610.42	Pipe & Tubing, Carbon, not Welded, Threaded	337,916	7.5	6.0	10.0	4.9	6.7
610.49	Non-Welded Pipe & Tubing, Carbon, Other	364,769	10.5	8.0	10.0	4.9	4.0
610.52	Alloy Pipe & Tubing, not Welded, Other	99,881	13.0 + additional duties	7.5 + additional duties	10.0	6.5	8.4
646.26	Wire Nails, 1" long & over 0.065" Dia.	423,134	0.5	0.5	4.6	4.9	9.9

‡ These TSUS numbers were revised in *Schedule XX*, the document containing the U.S. tariff results of the Tokyo Round of negotiations.

† TSUS 607.83 is a product category encompassing both sheets and plates.

* In these cases, ITC trade weights were only developed for a broad product category containing both sheets and plates. Therefore, only one EEC, Japanese and Canadian equivalent tariff can be calculated for both sheets and plates.

STATEMENT OF THE LEATHER PRODUCTS COALITION [1]

This statement is presented on behalf of the members of the Leather Products Coalition, a group of trade associations and labor unions in leather-related industries.[2] The organizations include:

Amalgamated Clothing and Textile Workers Union, AFL–CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO; Luggage and Leather Goods Manufacturers of America, Inc.; United Food and Commercial Workers International Union, AFL–CIO; and Work Glove Manufacturers Association.

The products manufactured by these organizations include nonrubber footwear, luggage, handbags, personal leather goods, work gloves and leather apparel. Many of these products, with the exception of nonrubber footwear and leather apparel whose duties were not cut in the MTN, will be negatively impacted by H.R. 5228, legislation which has been proposed by the Administration "to authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements." We, therefore, oppose H.R. 5228.

According to a February 24, 1984 letter from Ambassador Brock published in the May 17, 1984 Congressional Record, the mechanics of the legislation would work in the following manner:

"On the date of passage in 1984, the President would be able in proclaim the immediate application of the rates scheduled to be effective January 1, 1985. On January 1, 1985, the President would be empowered to proclaim the rates effective January 1, 1986, depending upon whether he determines that appropriate concessions have been made. *On January 1, 1986, the President would again be empowered to proclaim the rates scheduled to be effective on January 1, 1987.*" (Emphasis added.)

We oppose this legislation for several reasons.

First, we consider a reduction in the staging period for the MTN tariff cuts to be a breach of faith with U.S. industry and labor. Section 109 of the Trade Act of 1974 established clearly the ground rules for the staging of tariffs cuts. U.S. industry and labor gave their advice in connection with the MTN negotiations against this background. In the Trade Agreements Act of 1979, Congress modified the staging requirements somewhat in Section 503. But the Executive Branch was clearly on record that the norm was eight staged cuts with some exceptions specified in Section 503. Indeed in the case of textile products, some of which are the products of members of the Leather Products Coalition, Ambassador Robert Strauss, then the Special Representative for Trade Negotiations, made the commitment crystal clear in this exchange with Senator Ribicoff on July 10, 1979:

"Mr. STRAUSS. . . . They are to be phased in, beginning in 2 years over an 8-year period.

"Senator RIBICOFF. Can the garment industry depend on your statement, just given, that that is the rate of cut that will be involved and put into place?

"Mr. STRAUSS. Senator, yes. Let me tell you this. *Damned near anybody can depend on a statement I make in a record like this before the Senate.*" (Emphasis added. Hearings before the Subcommittee on International Trade, Senate Committee on Finance, July 10 and 11, 1979. Part 1 of 2 parts. Page 400.)

Second, it will have a harmful impact on several leather-related product categories for which duties will be reduced precipitiously and will cost $2.6 million in foregone revenues to the U.S. Government (See Table 1). Let us cite some specific situations.

With respect to work gloves, several categories will be negatively affected by the bill's passage, including some categories for which the acceleration will have a significant impact. Two work glove categories, leather and leather/fabric combination work gloves (provided for in TSUSA items 705.3510 and 705.3550) are scheduled to have their tariffs cut in one stage effective January 1, 1987. The tariff cut should never have been made in the first place, since it was done without consulting the industry Sector Advisory Committee on leather products, despite a prior understanding that these products would not be cut. Because the tariff cut was made without this prior consultation, the U.S. Government agreed through Steven Lande, the STR official who negotiated this cut, that the reduction would not be made before January 1, 1987, the final year of the staged rate reductions. Thus, the Administration's proposal in H.R. 5228 would, in effect, exacerbate the error already made with respect to these work gloves by hastening a duty reduction that never should have occurred in the first place. The impact of the acceleration of this tariff reduction would be $328,000 in foregone revenues (Customs duties), based on 1983 import levels of $33 million, and assuming a mid-year 1984 enactment of this legislation.

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[1] Members of the coalition are Amalgamated Clothing and Textile Workers Union, AFL–CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO; Luggage and Leather Goods Manufacturers of America, Inc.; United Food and Commercial Workers International Union, AFL–CIO; and Work Glove Manufacturers Association.

[2] The Footwear Division of the Rubber Manufacturers Association associates itself with the position taken in this statement.

Gloves of rubber or plastic (TSUSA item 705.8600) present a major problem for the work glove industry. Trade in this category is not insignificant. The value of 1983 imports was $5.3 million. This caregory received the full 60 percent cut during the MTN (Tokyo) round. In 1979, the ad valorem duty rate on gloves in this category was 35 percent. Today it is 21.9 percent and it is scheduled to be phased down to 14 percent effective January 1, 1987. The Administration's proposal would accelerate this process, beginning this year if the legislation is passed, by 2.6–2.7 percentage points per year, over a three-year period; the cumulative impact will be 6.6 percentage points over this time period assuming mid-year 1984 enactment of H.R. 5228, or $349,000 in foregone revenues based on 1983 import levels. This is not an insignificant amount in duties on this import-sensitive work glove category, particularly in light of the fact that work gloves in this category were denied GSP eligibility in 1982 because of import sensitivity.

Certain luggage, flat goods, and handbag categories will also be impacted by an acceleration in the staged reduction. Some 20 TSUSA categories of luggage, flat goods and handbags will be affected. In the case of three TSUSA categories, luggage, flat goods and handbags of textile materials, wholly or in part braid (TSUS items 706.32, 706.33, 706.34), the acceleration would reduce duties on imports by 1.5–1.6 percentage points per year over the next three years. Again, assuming mid-year 1984 enactment of H.R. 5228, the cumulative impact of the duty acceleration will be almost 4 percentage points. The value of imports in these three categories alone in 1983 was $5.6 million.

While these three luggage, handbag and flat goods categories will be impacted substantially under H.R. 5228 (the combined effect being approximately $234,000 in foregone revenues based on 1983 trade), each of the 20 categories affected by the acceleration will have a substantial cumulative impact over the three years they are phased in. In light of current import penetration in these industries (handbags, 85 percent; luggage, 50 percent; flat goods, 35 percent) an acceleration of the phased reductions is simply unacceptable at this time. Furthermore, to the extent imports will be priced lower because of the reduction in duties, domestically-produced goods competitive with imports will also have to be priced lower. Thus, one can conclude that the estimated loss in customs revenues of $2.6 million will be reflected in a comparable loss in revenues to domestic leather products producers.

Third, the leather-related products sector, and the nation as a whole, face a trade deficit of such mammoth proportions that we cannot imagine why the Administration would possibly want to stimulate additional imports at this time. An irony of H.R. 5228 is that it is in response partly to Japan that the Administration is requesting it—Japan, with which we have a $22 billion trade deficit and which maintains quotas on imports from the U.S. of leather products of our industries. Imports of all leather-related products are increasing as never before and currently have import penetration rates ranging from 35 to 85 percent of our market, even at present duty rates.

Last, but not least, with respect to the substantial number of products of our industries which are classified as textile products, (these leather-related industries produce articles of leather, textiles, and plastics), we have an additional and compelling concern, and that is the effect of H.R. 5228 in relation to the provision in Section 504 of the Trade Agreements Act of 1979, Snapback of Textile Tariff Reductions. The snapback, in effect, provides some insurance for the import sensitive fiber/textile/apparel product sector if it should lose its protection under the Multifiber Arrangement, the international agreement on trade in textiles and apparel. Section 504 of the Trade Agreements Act of 1979 states:

"[I]f the Arrangement [Multifiber Arrangement] or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, ceases to be in effect with respect to the United States *before the total reduction in the rate of duty for such* [textile and apparel] *item . . . has become effective,* then the President shall proclaim the rate of duty in rate column numbered 1 for such item existing on January 1, 1975, to be the rate of duty effective . . ." (Emphasis added)

The MFA will expire at the end of July 1986 unless renewed. As the current staged rate reduction scheme exists, if the MFA is not extended, the fiber/textile/apparel complex will at least be protected by this provision which snaps back to the January 1, 1975 rate, the rates of duties on textiles and apparel. In effect, if H.R. 5228 is enacted the U.S. Government would be giving up considerable leverage to secure renewal of the Multifiber Arrangement (or a substitute arrangement) because the MFA is set to expire July 31, 1986, after the accelerated staged reduction (for most articles) called for in H.R. 5228 will be completed.

In conclusion, the MTN staged reductions were scheduled to be phased in over an 8-year period for most articles. This schedule was carefully worked out with U.S. industries, with labor and with Congress. For many industries this has been a painful adjustment process. We see absolutely no reason why this process should be accelerated. Indeed, it will prove harmful to several of our industries and many others. We urge the Subcommittee not to report H.R. 5228 favorably.

TABLE 1.—TARIFF AND REVENUE IMPACT OF H.R. 5228 ON CERTAIN WORK GLOVES, LUGGAGE, HANDBAG AND PERSONAL LEATHER GOODS (FLAT GOODS) ITEMS

[Dollars in thousands]

TSUS item	1983 imports	Cumulative reduction in tariff rate [1] (percent)	Foregone revenues, mid-1984–86
Work Gloves:			
705.3510			
705.3550	$32,800	1.0	$328
705.8300	37,619	.4	151
705.8600	5,294	6.6	349
Luggage, handbags and flat goods:			
706.04	1,695	.75	13
706.06	5,756	1.0	58
706.09	46,426	.35	162
706.13	51,162	.65	333
706.16	1,513	1.35	20
706.19			
706.21	2,071	2.2	46
706.2930			
706.2960	6,338	1.0	63
706.32			
706.33	5,923	3.95	234
706.34			
706.3640			
706.3650	26,099	2.45	639
706.3680			
706.4200	1,481	[2] 1.5	
706.4300		1.25	27
706.4400	2,137	3.7	79
706.4500	3,137	3.0	94
706.4700	152	4.05	6
Total			2,602

[1] Assuming mid-year 1984 enactment of H.R. 5228.

[2] Cents per pound, plus.

Source: U.S. Department of Commerce IM 146 and Economic Consulting Services Inc.

H.R. 5283

To suspend until July 1, 1987, the duty on lace-braiding machines and parts thereof.

STATEMENT OF NORTHERN TEXTILE ASSOCIATION, BOSTON, MA

The Northern Textile Association represents textile manufacturers located principally in the Northeast but also in various other parts of the country. The Elastic Fabric Manufacturers Council of the Association consists of the principal manufacturers of narrow elastic fabrics in the United States.

Members of the Elastic Fabric Manufacturers Council strongly support H.R 5283, a bill introduced by Representative Richard Schulze. This bill would temporarily suspend the existing Column I rate of duty on lace braiding machines and their parts.

The machines covered by this legislation are used in the production of decorative rigid and stretch lace, which has a wide variety of end uses in apparel and home furnishing products. This equipment, and all proprietary parts, are not available from domestic manufacturers and must be purchased from foreign manufacturers. Narrow fabric manufacturers therefore believe that there is no reason for the federal government to impose a duty on these particular machines and their proprietary parts, currently assessed at 5.6% ad valorem.

As the economic recovery in the United States continues, narrow fabric manufacturers have begun the purchase of these machines from foreign sources. The companies regard these purchases as a vital part of their modernization programs and believe that this equipment will enable them to remain competition in both domestic and international (export) markets.

There are currently 4 plants throughout the country which produce decorative rigid and stretch lace. These facilities employ about 600 people with an estimated combined annual payroll over $8 million.

We estimate that approximately 700 lace braiding machines are currently in use. Approximately $160,000 of lace braiding machinery was imported in 1983 alone. When narrow fabric manufacturers purchase these new foreign built machines, which sell for approximately $16,000 per unit, they are penalized by the duty of about $896 per machine. The penalty, of course, must be reflected in the ultimate price of the product in the marketplace. Conversely, if manufacturers do not purchase the machinery, their products will not benefit from the manufacturing flexibility offered by this new, high-technology equipment.

During the 1979 Multilateral Trade Negotiations, it was agreed that the U.S. duty on these machines would phase-down from 7% ad valorem in 1979 to 4.7% ad valorem by 1987. This clearly provides little relief at this time when manufacturers' purchases of these machines are increasing and there is no domestic alternative source of purchase.

Enactment of H.R. 5283 will be beneficial to American manufacturers as well as consumers. Suspension of the existing duty on these machines and their proprietary parts until July 1, 1987 will encourage narrow fabric firms to continue to replace outdated equipment. Purchasing the new equipment without the penalty of a tariff will assure that decorative rigid and stretch lace products will be more competitive at home and abroad.

Purchases of foreign-made machinery and proprietary parts should also stimulate employment and exports. The U.S. narrow fabric industry had established an export market which will be stimulated when foreign exchange values are reduced. Decorative rigid and stretch lace products are in great demand by designers and manufacturers and domestic producers must be prepared to meet this demand. For these reasons, we respectfully urge the Subcommittee to favorably recommend H.R. 5283 to the Ways and Means Committee.

H.R. 5284

To suspend until July 1, 1987, the duty on narrow fabric looms and parts thereof.

LEESONA CORP.,
Warwick, RI, May 17, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON, This letter is to indicate the support of Leesona Corporation for H.R. 5284, a bill which suspends the duty on narrow fabric looms.

We request that our statement of support be included in the record of the Trade Subcommittee testimony on this legislation.

Very truly yours,

ROSS A. SLATER,
President, Textile Machinery Division.

STATEMENT OF NORTHERN TEXTILE ASSOCIATION, BOSTON, MA

The Northern Textile Association represents textile manufacturers located principally in the Northeast but also in various other parts of the country. The Elastic Fabric Manufacturers Council of the Association consists of the principal manufacturers of narrow elastic fabrics in the United States.

Members of the Elastic Fabric Manufacturers Council strongly support H.R. 5284, a bill introduced by Representative Richard Schulze. This bill would temporarily suspend the existing Column I rate of duty on narrow fabric looms and their parts.

The machines covered by this legislation are used in the production of woven narrow fabrics which have a wide variety of end uses in apparel, medical, industrial and home furnishing products. This equipment, and all proprietary parts, are not available from domestic manufacturers and must be purchased from foreign manufacturers. Narrow fabric manufacturers therefore believe that there is no reason for the federal government to impose a duty on these particular machines and their proprietary parts, currently assessed at 5.6% ad valorem.

As the economic recovery in the United States continues, narrow fabric manufacturers have begun to purchase large numbers of these machines from foreign sources in Switzerland, England, West Germany and Japan. Many companies regard these purchases as a vital part of their modernization programs and believe that this equipment will enable them to remain competitive in both domestic and international (export) markets.

We estimate that there are currently about 175 throughout the country which produce narrow fabrics. These facilities employ about 22,600 people with an estimated combined annual payroll in excess of $300 million. Many of these firms manufacture products for export as well as domestic consumption, although the current high value of the dollar has temporarily dampened the export market.

We estimate that about 4,000 narrow fabric looms are currently in use in the United States. Approximately 1,336 of these looms were imported for purchase during the two-year period of 1982–83 (Table attached). This represented a value of $11 million. When narrow fabric manufacturers purchase these new foreign built machines, which sell for an average price of $12,000., but can go as high as $30,000. per unit, they are penalized by the duty which can amount to as much as $1,680 per machine. The penalty, of course, must be reflected in the ultimate price of the product in the marketplace. Conversely, if manufacturers do not purchase the machinery, their products will not benefit from the manufacturing flexibility offered by this new, high-technology equipment.

During the 1979 Multilateral Trade Negotiations, it was agreed that the U.S. duty on these machines would phase-down from 7% ad valorem in 1979 to 4.7% ad valorem by 1987. This clearly provides little relief at this time when manufacturers' purchases of these machines are increasing and there is no domestic alternative source of purchase.

Enactment of H.R. 5284 will be beneficial to American manufacturers as well as consumers. Suspension of the existing duty on these machines and their proprietary parts until July 1, 1987 will encourage narrow fabric firms to continue to replace outdated equipment. Purchasing the new equipment without the penalty of a tariff will assure that woven narrow fabric products will be more competitive at home and abroad.

Purchases of foreign-made machinery and proprietary parts should also stimulate employment and exports. The U.S. narrow fabric industry had established an export market which will be stimulated when foreign exchange values are reduced. Narrow fabric products are in great demand by designers and manufacturers and domestic producers must be prepared to meet this demand. For these reasons, we respectfully urge the Subcommittee to favorably recommend H.R. 5284 to the Ways and Means Committee.

IMPORTS OF TSUSA ITEM 670.14 [1]

[Dollar figures are in thousands]

	January-December			
	1982		1983	
	Number	Dollars	Number	Dollars
Norway			1	32
UK	67	834	21	186
Netherlands	57	458	3	20
Belgium	8	216	24	169
France	15	470	5	108
West Germany	78	1,110	53	1,370
Switzerland	143	1,790	67	979
Italy	130	893	85	534
Japan	398	1,206	181	502
Total	896	6,976	440	3,900

[1] Power-driven weaving machines of fabrics less than 12 inches wide.

H.R. 5337

To amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips, and sheets of acrylic plastic materials.

STATEMENT OF JOHN J. STEVENS, JR., DIRECTOR, BUSINESS PLANNING AND DEVELOPMENT, CYRO INDUSTRIES

CYRO Industries is a major United States producer of acrylic sheet. CYRO has facilities that manufacture acrylic sheet and/or its direct raw materials at Fortier, La., Wallingford, Ct., and Sanford, Me. CYRO's acrylic sheet is sold in the United States under the trademarks ACRYLITE FF and ACRYLITE GP.

BACKGROUND

Acrylic sheet is produced in the United States by at least ten U.S. producers. In addition, it is imported from several foreign countries. Major countries of origin include Taiwan, Canada, West Germany, Japan, and Brazil.

Imports of acrylic sheet are currently classified under two separate provisions of the Tariff Schedules, 771.41 "flexible" acrylic sheet and 771.45 "other" acrylic sheet. The dictinction between the two classifications is based on whether the sheets are considered "flexible" within a dictionary definition of "flexible".

Since 1969, imports of acrylic sheet considered to be "flexible" have been assessed a lower duty than other types of acrylic sheet. The lower duty rate imports account for more than 75% of total imports of acrylic sheet. The "flexible" classification has caused a large percentage—we estimate more than 60%—of the 75% imported at the lower duty rate classification, to come into the U.S. *duty free.* That is because 771.41 "flexible" is a basket classification and many other types of plastic sheet are included.

The acrylic sheet market is a small, highly competitive one with 1983 sales of U.S. producers totaling about $250 million dollars and about 220 million pounds. Imports, which have been growing very rapidly, totaled about 40 million pounds in 1983 or 18% of U.S. manufacturers' production.

The competitive nature of the business demands that imported acrylic sheet be correctly accounted for and no unintended duty-free status, under the law, be granted to imported acrylic sheet simply because of a basket type classification of some of the product grades.

No special or restrictive treatment is requested or required to maintain a viable U.S. acrylic sheet business. However, proper classification of acrylic sheet is critical. This is particularly important when considering the competitive need limit provided for under the General System of Preferences guidelines. If imports of "flexible" acrylic sheet had been classified as a separate item, then in several recent years, the amount of acrylic sheet imported from the country of Taiwan would have exceeded the competitive need limit as defined by the General System of Preferences, and this product would have lost its duty free status. As it is, most Taiwanese acrylic sheet comes under the basket classification and enters into the U.S. duty free.

Imports of other types of acrylic sheet from Taiwan exceeded the competitive need limit under the GSP in 1979, 1981, 1982 and 1983, and, as a result, no longer receive duty-free treatment.

CYRO POSITION

We believe that the term "flexible" for purposes of the classification of plastic film, strips and sheets of acrylic under Tariff Schedules items 771.41 and 771.43 needs to be better defined.

The American Society for Testing Materials (ASTM) has adopted certain definitions relating to the plastics industry. The ASTM designation D883-83, "Standard Definitions of Terms Relating to Plastics" defines a plastic's degree of rigidity or flexibility in terms of the material's modulus of elasticity (See Exhibit A).

We believe that the ASTM test is the appropriate, and recognized method of defining a plastic material's degree of flexibility. Plastics are defined as "rigid", "semirigid", or "non-rigid" by ASTM. "Flexible" plastics normally fall under the "non-rigid" classification. CYRO believes that this "non-rigid" designation is an appropriate definition for "flexible" acrylic plastics within the Tariff Schedules.

As a further indication of the inappropriateness of the currently used definition of "flexible" acrylic sheet within the Tariff Schedules, ASTM D883-83 defines "rigid" plastics as those with a modulus of elasticity of greater than 100,000 psi. CYRO's acrylic sheet has modulus values in the 400,000 psi to 480,000 psi range (See Exhibits B and C). This clearly is well within the "rigid" plastic definition set by ASTM, yet in thicknesses of up to 0.250 inch, acrylic sheet is considered "flexible" under current Tariff Schedule definitions.

RECOMMENDATION

CYRO Industries supports enactment of federal legislation that would define "flexible" acrylic plastic film, strips and sheets as "non-rigid" plastics within the scope of ASTM D883-83.

House Bill H.R. 5337 amends the Tariff Schedules appropriately and CYRO Industries supports its passage.

RESULT

Enactment of House Bill H.R. 5337 will essentially eliminate the dual classification of acrylic sheet. All imported acrylic sheet will then be treated as one product class under the Tariff Schedules.

EXHIBIT A

American Society for Testing and Materials (ASTM)
Definitions of the Rigidity of Plastic Materials

Designation: D 883 – 83

Standard Definitions of Terms Relating to PLASTICS[1]

This standard is issued under the fixed designation D 883; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

These definitions have been approved for use by agencies of the Department of Defense and for listing in the DoD Index of Specifications and Standards.

1. Scope

1.1 This standard is a compilation of definitions of technical terms used in the plastics industry. Terms that are generally understood or adequately defined in other readily available sources are not included.

1.2 When a term is used in an ASTM document for which Committee D-20 is responsible it is included only when judged, after review, by Subcommittee D 20.92 to be a generally usable term.

1.3 Definitions that are identical to those published by another standards body are identified with the abbreviation of the name of the organization; for example, IUPAC is the International Union of Pure and Applied Chemistry.

1.4 A definition is a single sentence with additional information included in notes. It is reviewed every 5 years; the year of last review is appended.

1.5 For literature related to plastics terminology, see the Reference section at the end of this standard.

rigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension greater than 700 MPa (100 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Methods D 790, Test for Flexural Properties of Plastics and Electrical Insulating Materials,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

semirigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension of between 70 and 700 MPa (10 000 and 100 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Method D 790, Test for Flexural Properties of Plastics and Electrical Insulating Materials,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

nonrigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension of not over 70 MPa (10 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 790, Test for Flexural Properties of Plastics,[4] ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

EXHIBIT B
(1 of 2 Pages)

BULLETIN AST 11C

Physical Properties of
Acrylite
Acrylic Sheet

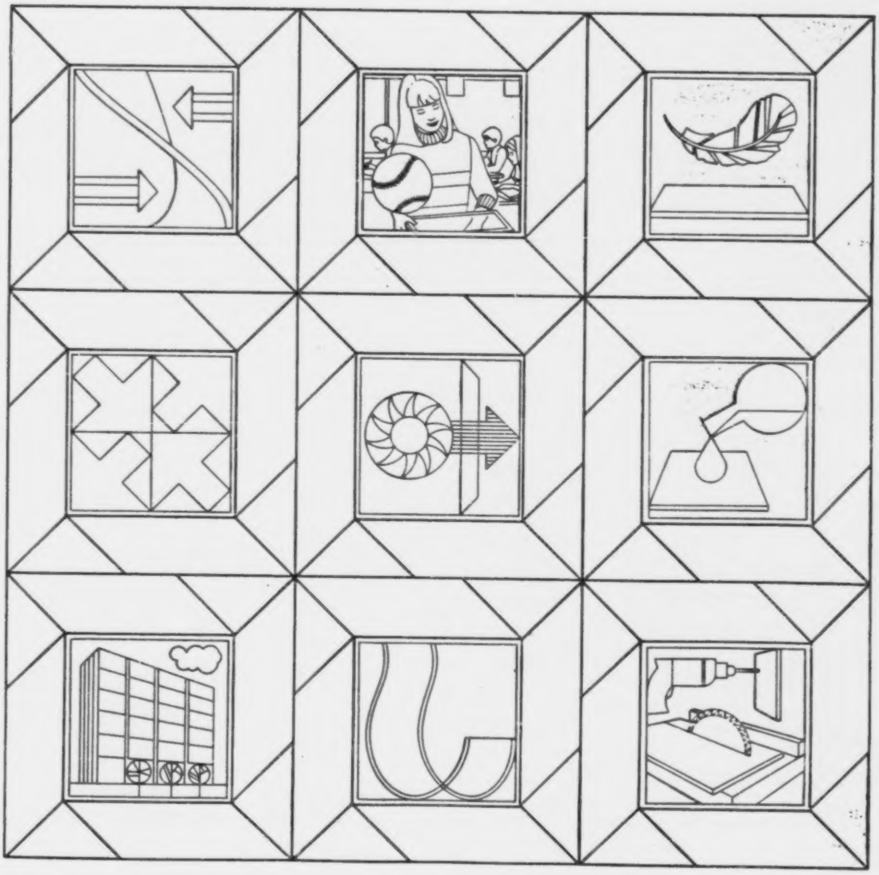


TABLE 1-a PHYSICAL PROPERTIES of ACRYLITE GP and MS-2 SHEET ①

PROPERTY	ASTM Method	UNITS	Average Value for ② .250" Thickness
MECHANICAL			
Specific Gravity	D792-66	—	1.19
Tensile Strength	D638-67T		
(Rupture)		PSI	10,000
Elongation, Rupture		%	4.2
Modulus of Elasticity		PSI	400,000
Flexural Strength	D790-66		
(Rupture)		PSI	16,500
Modulus of Elasticity		PSI	475,000
Compressive Strength	D695-63T		
(Yield)		PSI	18,000
Modulus of Elasticity		PSI	430,000
Compressive Deformation			
Under Load	D621-64		
2000 PSI, 122°F., 24 hr.		%	0.23
4000 PSI, 122°F., 24 hr.		%	0.81
Shear Strength	D732-46(1961)	PSI	9,000
Impact Strength			
Izod Milled Notch	D256-56(1961)	ft. lbs./in. of notch	0.4
Rockwell Hardness	D785-65	—	M94
Barcol Hardness	D2583-67	—	49
Residual Shrinkage ③	D702-64T		
(Internal Strain)			
ACRYLITE GP		%	approx. 2
ACRYLITE MS-2		%	less than 1
OPTICAL Based on Clear Material			
Refractive Index	D542-50(1965)	—	1.49
Luminous Transmittance	D1003-61		
As Cast			
Parallel		%	91
Total		%	92
Haze		%	less than 1
Luminous Transmittance	D1003-61		
After 1000 hrs. Accelerated Weathering.	D1499-64		
Parallel		%	91
Total			92
Haze			less than 1
Effect of Accelerated Weathering	D1499-64		
on Appearance.			
Crazing		—	none
Discoloration		—	none
Warping		—	none
Ultraviolet Transmission	Cary		
at 320 mμ	Model 11	%	0
Displacement Factor	D637-50(1965)	—	50

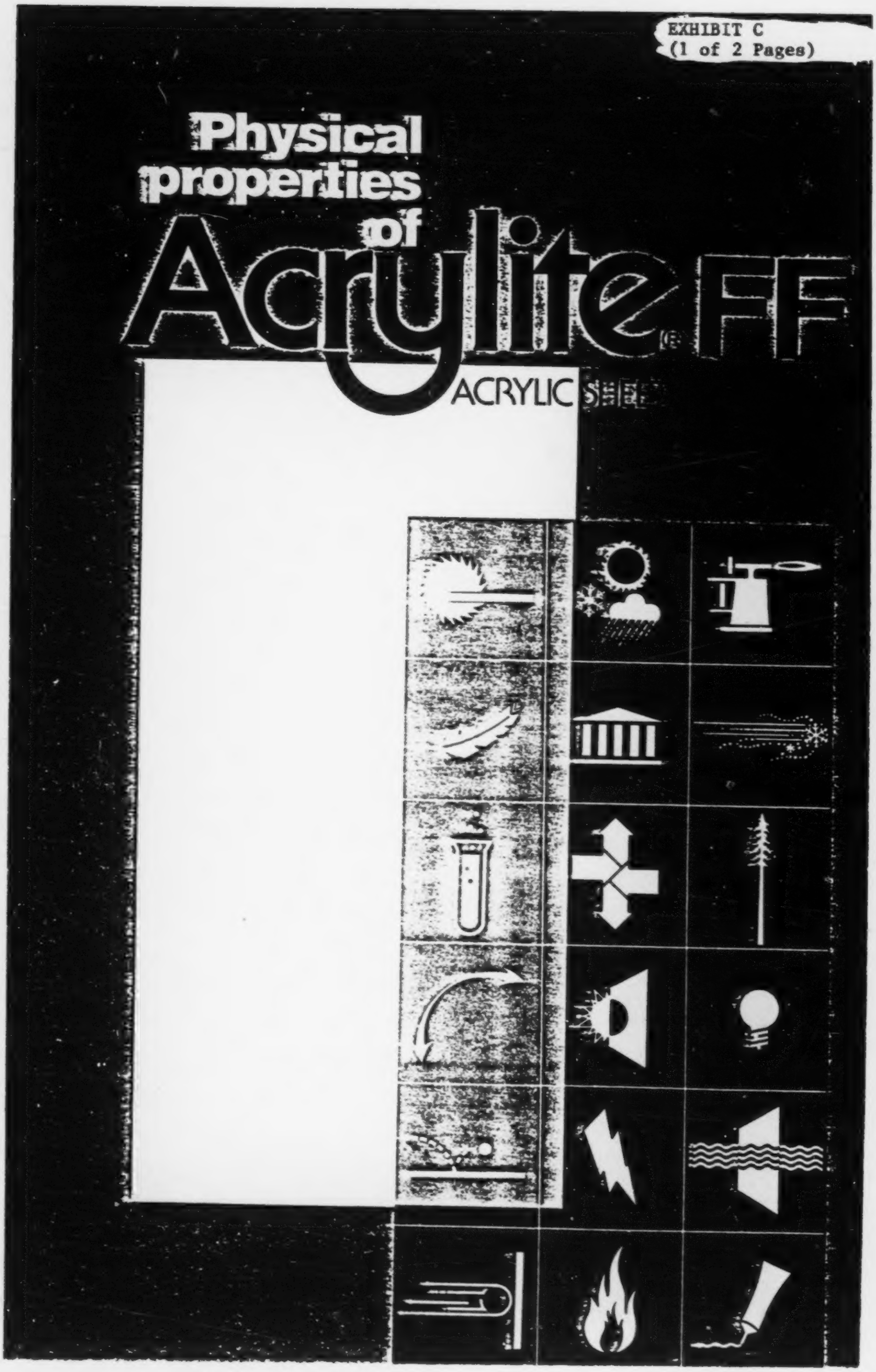
NOTES:

① Data given are average values and should not be used for specification purposes.

② All values shown are for .250" thickness of ACRYLITE GP and MS-2 sheet, unless noted otherwise. Some values will change with thickness.

③ Difference in length and width, as measured at room temperature, before and after heating above 300°F.

EXHIBIT C
(1 of 2 Pages)



Physical properties of Acrylite® FF

ACRYLIC SHEET

(2 of 2 Pages)

Physical Properties of Acrylite® FF

ACRYLIC SHEET

Property[a]		ASTM Method	Typical Value (0.250" Thickness)[b]
Mechanical	Specific Gravity	D 792	1.19
	Tensile Strength Elongation, Rupture Modulus of Elasticity	D 638	10,000 psi (69 M Pa) 4.5 % 400,000 psi (2800 M Pa)
	Flexural Strength Modulus of Elasticity	D 790	17,000 psi (117 M Pa) 480,000 psi (3300 M Pa)
	Compressive Strength (Yield)	D 695	17,000 psi (117 M Pa)
	Impact Strength Izod Milled Notch	D 256	0.4 ft. lbs/in. of notch (21.6 J/m of notch)
	Rockwell Hardness	D 785	M-93
	Barcol Hardness	D 2583	48
Optical	Refractive Index	D 542	1.49
	Light Transmission, Total	D 1003	92 %
Thermal	Forming Temperature	—	Approx. 300°F.[c] (149°C.)
	Deflection Temperature under load, 264 psi	D 648	195°F. (91°C.)
	Vicat Softening Point	D 1525	230°F. (110°C.)
	Maximum Recommended Continuous Service Temperature	—	160°F.[d] (71°C.)
	Coefficient of Linear Thermal Expansion	D 696	0.000040 in/in/°F. (0.000064 in/in/°C.)
	Coefficient of Thermal Conductivity	Cenco-Fitch	1.3 BTU/ hour sq. ft. °F./in. (0.19 w/m-K)
	Flammability, Burning Rate (0.125" thickness)	D 635	1.0 in/min. (25 mm/min.)
	Self Ignition Temperature	D 1929	830°F. (443°C.)
	Specific Heat @ 77°F.	—	0.35 BTU/ lb. °F. (1470J/Kgk)
	Smoke Density Rating	D 2843	5-10%
Electrical	Dielectric Strength Short Time (0.125")	D 149	430 volts/mil (17 KV/mm)
	Dielectric Constant 60 Hertz 1000 Hertz 1000000 Hertz	D 150	 3.6 3.3 2.8
	Dissipation Factor 60 Hertz 1000 Hertz 1000000 Hertz	D 150	 0.06 0.04 0.02
	Volume Resistivity	D 257	10^{16} ohm-cm
	Surface Resistivity	D 257	10^{15} ohms
Water Absorption 24 hrs @ 73°F		D 570	0.2
Odor		—	None
Taste		—	None

NOTES: (a) Typical values; should not be used for specification purposes.

(b) Values shown are for 0.250" thickness. Some values will change with thickness.

(c) Temperature varies with thickness.

(d) It is recommended that temperatures not exceed 160°F. for continuous service, or 190°F. for short intermittent use.

STATEMENT OF E.I. DU PONT DE NEMOURS & CO.

E. I. du Pont de Nemours and Company (Du Pont), a Delaware corporation with offices located at 1007 Market Street, Wilmington, Delaware, 19898, is one of five major producers of acrylic sheet. Du Pont manufactures acrylic sheet in our plant outside Memphis, Tennessee, and markets the product in the U.S. under the trademark "Lucite".

There are about twenty other U.S. producers with whom Du Pont competes. Our product is also in competition with acrylic sheet manufactured abroad and exported to the U.S. Exports of acrylic sheet enter this country from Mexico, the Philippines and about 10 other countries. Foremost among the exporting countries is Taiwan, accounting for nearly 90% of all imports over the past two years.

H.R. 5337, which, in amending the Tariff Act of 1930 by setting forth a definition of the term "flexible" for purposes of determining the tariff treatment of acrylic sheet entering this country, will remedy a serious inequity never intended by Congress and one which must be resolved. This inequity—the duty free entry of most acrylic sheet into this country—continues to have a debilitating affect on the health of Du Pont's acrylic sheet industry and our ability to compete effectively with the rising tide of imports from abroad, particularly Taiwan.

Imports of acrylic sheet are currently classified under two separate provisions of the tariff schedule, TSUS 771.41 and TSUS 771.45. Acrylic sheet from Taiwan entering under the former classification, a basket classification including acrylics and other plastics, is eligible for duty-free treatment under the Generalized System of Preferences (GSP). Acrylic sheet from Taiwan entering under the latter classification is also eligible for duty-free treatment, but imports from Taiwan have exceeded the competitive need limits hence eliminating duty-free treatment. Not surprisingly, over the past two years more than 75% of the imports of acrylic sheet from Taiwan have entered under the basket category, thereby avoiding duty.

The courts and administrative agencies have defined "flexible" as "blendable", or, more precisely, whether the edges of a sample can be bent so they touch. We believe H.R. 5337 provides a more realistic definition of the term—based on modulus of elasticity—consistent with the common meaning of the term within the industry. The current test of bendability is simply too broad, has caused administrative difficulty and confusion, and, most importantly, has permitted acrylic sheet from Taiwan, contrary to the intent of the framers of the Tariff Schedules, to enter this country duty free and compete unfairly with domestically-produced sheet. In this context, we note that if imports of "Flexible" acrylic sheet had been classified as a separate item instead of being grouped with other products in a basket classification, or if imports of "flexible" acrylic sheet and other acrylic sheet had been consolidated under one item limited to acrylic sheet, imports of "flexible" acrylic sheet from Taiwan would have exceeded the competitive limit under the GSP in several recent years and would have had duty-free treatment automatically withdrawn as a result of the annual review process of the Office of the U.S. Trade Representative. *See* Letter of H. A. Spilner to John J. Salmon (April 30, 1984).

We urge support of H.R. 5337, the effect of which would be to cause all thicknesses of acrylic sheet currently being imported to be classified under one item, 771.45. It is a result long overdue.

STATEMENT OF RICHARD L. GARTHWAITE, VICE PRESIDENT, MARKETING, POLYCAST TECHNOLOGY CORP.

SUMMARY

Polycast Technology Corporation is a manufacturer whose primary product is acrylic sheet. It manufactures acrylic sheet in Stamford, Connecticut and Hackensack, New Jersey.

Polycast joins fully in the comments by Rohm and Haas Company, dated April 30, 1984, regarding the need for and the appropriateness of this bill. Therefore, Polycast confines its comments to those specific areas in which it has comments in addition to those expressed by Rohm and Haas.

The Problem—Misclassification

Imports of acrylic sheet are now classified under two separate provisions of the Tariff Schedules. The distinction between the two classifications is based on whether the sheets are considered "flexible" within a dictionary definition of "flexible".

Several problems have been created by this bifurcation:

Since 1969, imports of acrylic sheet considered to be "flexible" have been assessed a lower duty than other acrylic sheet. The lower duty rate imports account for more than 75% of total imports of acrylic sheet.

The separation of acrylic film, strips and sheets into "flexible" and "nonflexible" is arbitrary, failing to reflect the actual properties of these acrylic materials or the competitive realities of the plastics industry.

Under the present classification system, imported acrylic materials which may actually have properties similar to domestic acrylic materials may be placed in different classifications from the domestic acrylic. The imports can then be given tariff and competitive need limit treatment which does not reflect the realities of the plastics industry. This is because the present "flexible" standard relies on a "bendability" test, of whether the material can be bent until its edges meet, without regard to the nature of the specimen tested or the conditions of the test. Under this standard, two different specimens of the same material can be tested with entirely different results.

Recommendation

Polycast Technology Corporation requests that the Tariff Schedules be amended to provide for a definition of the term "flexible" for purposes of the classification of plastic film, strips and sheets of acrylic under items 771.41 and 771.43.

The effect of this proposal will be to establish an easy to read, uniform and objective standard which reflects the realities of the plastics industry and restore to the Tariff Schedules the duty treatment the Congress intended to give to acrylic film, strips and sheets. This proposal would eliminate the arbitrariness of the present classification, exemplified by the classification of acrylic sheets of 0.250 inches or less in thickness as flexible and acrylic sheets over 0.250 inches thick as nonflexible, in complete disregard of the fact that certain sheets over 0.250 inches thick are actually less rigid than sheets under 0.250 inches thick under standards long established in the plastics industry.

Comments of Polycast Technology Corporation on H.R. 5337

A BILL To Amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips and sheets of acrylic plastic material.

PRELIMINARY STATEMENT

Polycast Technology Corporation is a manufacturing company whose primary product is acrylic sheet. Its products are manufactured in Stamford, Connecticut and Hackensack New Jersey. In 1983, it had sales of $35,400,000.

Polycast joins fully in the comments by Rohm and Haas Company dated April 30, 1984, regarding the need for and the appropriateness of this bill. Therefore, Polycast discusses in this statement only those specific areas in which it has comments in addition to those expressed by Rohm and Haas.

Need To Amend Tariff Schedule of the United States

Acrylic film, strips and sheets are now subject to tariff classification under two separate provisions of sub-part B of Part 12 of Schedule 7 of the Tariff Schedules of the United States, based upon an arbitrary determination of whether such articles are defined to be "flexible" or "nonflexible". Flexible materials are classified under Item 771.41, TSUS, and subject to a different tariff than nonflexible materials, which are classified under Item 771.45, TSUS. Flexibility is tested by "bendability", whether the edges of a sample can be bent so that they touch.

The arbitary nature of the current classification is evident in three ways: (1) its application to acrylic products such as sheets have resulted in calssifications which in fact do not reflect the "flexibility" of the material; (2) it cannot be applied in a uniform manner; and (3) it has no relationship to competitive realities in the plastics industry.

The lack of any relationship between the classification and the actual properties of acrylic material is most striking in the case of acrylic sheet.

Sheet which is 0.250 inches or less in thickness is deemed by the United States Customs Service to be flexible and therefore under Item 771.41. Sheet which is over 0.250 inches thick is deemed nonflexible and under Item 771.45. However, many properties of most plastics, including acrylic sheet, can be modified significantly by additives or alloying, Therefore, depending on the additive and/or method of manufacture, two acrylic sheets of identical thicknesses may have significantly different amounts of "flexibility" or "bendability." Indeeed, it is entirely possible that one sheet can be bent with little or no pressure until its edges touch whereas a second sheet, of equal thickness and size, cannot be bent to any extent at all.

The lack of any uniformity in the application of the present standard for classification is again exemplified by acrylic sheets.

The "bendability" criterion leads to differing test results, depending on: (1) the dimensions of the samples; (2) the size, weight and strength of the individual performing the test; and (3) the use of mechanical aids such as bending or strapping machines. If a large enough sheet is tested by sufficiently strong persons or equipment, then it is possible that its edges can be bent until they meet. Indeed, almost any sheet material, which is sufficiently large and tested with enough force, can be bent until its edges touch. Therefore, it is entirely possible that a large sheet over 0.250 inches thick can be bent until its edges meet whereas a small sheet of 0.250 inches or less in thickness cannot be bent to meet this standard of "flexibility."

Finally, for the reasons outlined above, and for the reasons set forth in the comments by Rohm and Haas Company, imports which may in fact be comparable to certain domestic products may not be classified as such and may therefore be subject to inappropriate tariff and competitive need limit treatment. This result defeats a major purpose of the Tariff Schedules, to protect domestic manufacturers from unfair competition by imports.

Therefore, in order to eliminate the inequitable results of the present classification, Polycast supports the proposed amendment of the Headnotes to Subpart B, part 12, Schedule 7 of the Tariff Schedules of the United States. It will provide for the definition of the term "flexible" with respect to film, strips and sheets of acrylic based upon an established quantitative tests of modulus of elasticity, which has long been recognized in the plastics industry. This amendment would eliminate the present arbitrary "bendability" standard of flexibility.

Appropriateness of Proposed Definition of "Flexible"

Although a standard definition of the term "flexible" has not been adopted by the plastics industry, standard definitions of the terms "rigid plastic," "semi-rigid plastic," and "nonrigid plastic" have been adopted by the industry and set forth in the "Standard Definitions of Terms Relating to Plastics" (American Society for Testing and Materials ("ASTM") Designation D-883-83, attached as Exhibit C to comments of Rohm and Haas Company.) In most instances, "nonrigid" is synonymous in industry use with "flexible."

Polycast proposes that "flexible" acrylic plastic film, strips and sheets be considered "nonrigid plastics" as defined in ASTM D-883-83. This amendment would eliminate the arbitrariness inherent in the "bendability" standard and replace it with an objective standard which accurately reflects the physical characteristics of the materials, can be uniformly applied and which is a realistic indicator of the competitive realities in the plastics industry. This is because the proposed definition of "flexible" is based upon accepted tests for the flexural modulus and tensile modulus of materials. These tests are objective, uniform and readily reproducible means of measuring the ability of a material to withstand strain (weights or force) causing it to bend (flexural) and stretch (tensile). (See Exhibits A, B, C.)

Exhibit "A"

AMERICAN NATIONAL STANDARD **ANSI/ASTM D 638 - 77a**

Standard Test Method for
TENSILE PROPERTIES OF PLASTICS[1]

This Standard is issued under the fixed designation D 638; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last approval.

1. Scope

1.1 This method covers the determination of the tensile properties of plastics in the form of standard dumbbell-shaped test specimens when tested under defined conditions of pretreatment, temperature, humidity, and testing machine speed.

1.2 This method can be used for testing materials of any thickness up to 14 mm (0.55 in.). However, for testing specimens in the form of thin sheeting, including film less than 1.0 mm (0.04 in. in thickness) ASTM Method D 882, Test for Tensile Properties of Thin Plastic Sheeting,[2] is the preferred method. Materials with a thickness greater than 14 mm (0.55 in.) must be reduced by machining.

NOTE 1—The values stated in SI units are regarded as the standard.

NOTE 2—This method is not intended to cover precise physical procedures. It is recognized that the constant-rate-of-crosshead-movement type of test leaves much to be desired from a theoretical standpoint, that wide differences may exist between rate of crosshead movement and rate of strain between gage marks on the specimen, and that the testing speeds specified disguise important effects characteristic of materials in the plastic state. Further, it is realized that variations in the thicknesses of test specimens, which are permitted by these procedures, produce variations in the surface-volume ratios of such specimens, and that these variations may influence the test results. Hence, where directly comparable results are desired, all samples should be of equal thickness. Special additional tests should be used where more precise physical data are needed.

NOTE 3—This method may be used for testing phenolic molded resin or laminated materials. However, where these materials are used as electrical insulation, such materials should be tested in accordance with ASTM Method D 229, Testing Rigid Sheet and Plate Materials Used for Electrical Insulation,[2] and ASTM Method D 651, Test for Tensile Strength of Molded Electrical Insulating Materials.[3]

2. Applicable Documents

2.1 *ASTM Standards:*

D 618 Conditioning Plastics and Electrical Insulating Materials for Testing[2]
D 883 Definitions of Terms Relating to Plastics[4]
E 4 Verification of Testing Machines[5]
E 83 Verification and Classification of Extensometers[6]

3. Significance

3.1 This method is designed to produce tensile property data for the control and specification of plastic materials. These data are also useful for qualitative characterization and for research and development.

3.2 Tensile properties may vary with specimen preparation and with speed and environment of testing. Consequently, where precise comparative results are desired, these factors must be carefully controlled.

3.2.1 It is realized that a material cannot be tested without also testing the method of preparation of that material. Hence, when comparative tests of materials per se are desired, the greatest care must be exercised to ensure that all samples are prepared in exactly the same way, unless the test is to include the effects of sample preparation. Similarly, for referee purposes or comparisons within any given series of specimens, care must be taken to secure the maximum degree of uniformity in details of preparation, treatment, and handling.

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[1] This method is under the jurisdiction of ASTM Committee D-20 on Plastics and is the direct responsibility of Subcommittee D 20.10 on Mechanical Properties.

Current edition approved May 27 and June 24, 1977. Published August 1977. Originally published as D 638 - 41 T. Last previous edition D 638 - 76.

[2] *Annual Book of ASTM Standards*, Part 35.

[3] *Annual Book of ASTM Standards*, Part 39.

[4] *Annual Book of ASTM Standards*, Parts 34, 35, and 36.

[5] *Annual Book of ASTM Standards*, Parts 10, 14, 32, 35, and 41.

[6] *Annual Book of ASTM Standards*, Parts 10 and 41.

3.3 Tensile properties may provide useful data for plastics engineering design purposes. However, because of the high degree of sensitivity exhibited by many plastics to rate of straining and environmental conditions, data obtained by this method cannot be considered valid for applications involving load-time scales or environments widely different from those of this method. In cases of such dissimilarity, no reliable estimation of the limit of usefulness can be made for most plastics. This sensitivity to rate of straining and environment necessitates testing over a broad load-time scale (including impact and creep) and range of environmental conditions if tensile properties are to suffice for engineering design purposes.

NOTE 4 – Since the existence of a true elastic limit in plastics (as in many other organic materials and in many metals) is debatable, the propriety of applying the term "elastic modulus" in its quoted generally accepted definition to describe the "stiffness" or "rigidity" of a plastic has been seriously questioned. The exact stress-strain characteristics of plastic materials are highly dependent on such factors as rate of application of stress, temperature, previous history of specimen, etc. However, stress-strain curves for plastics, determined as described in this method, almost always show a linear region at low stresses, and a straight line drawn tangent to this portion of the curve permits calculation of an elastic modulus of the usually defined type. Such a constant is useful if its arbitrary nature and dependence on time, temperature, and similar factors are realized.

4. Definitions

4.1 Definitions of terms applying to this method appear in Definitions D 883 and Annex A1.

5. Apparatus

5.1 *Testing Machine* – A testing machine of the constant-rate-of-crosshead-movement type and comprising essentially the following:

5.1.1 *Fixed Member* – A fixed or essentially stationary member carrying one grip.

5.1.2 *Movable Member* – A movable member carrying a second grip.

5.1.3 *Grips* – Grips for holding the test specimen between the fixed member and the movable member. The grips shall be self-aligning, that is, they shall be attached to the fixed and movable member, respectively, in such a manner that they will move freely into alignment as soon as any load is applied, so that the long axis of the test specimen will coincide with the direction of the applied pull through the center line of the grip assembly. The specimens should be aligned as perfectly as possible with the direction of pull so that no rotary motion that may induce slippage will occur in the grips; there is a limit to the amount of misalignment self-aligning grips will accommodate.

5.1.3.1 The test specimen shall be held in such a way that slippage relative to the grips is prevented insofar as possible. Grip surfaces that are deeply scored or serrated with a pattern similar to those of a coarse single-cut file, serrations about 2.4 mm ($^3/_{32}$ in.) apart and about 1.6 mm ($^1/_{16}$ in.) deep, have been found satisfactory for most thermoplastics. Finer serrations have been found to be more satisfactory for harder plastics such as the thermosetting materials. The serrations should be kept clean and sharp. Breaking in the grips may occur at times, even when deep serrations or abraded specimen surfaces are used; other techniques must be used in these cases. Other techniques that have been found useful, particularly with smooth-faced grips, are abrading that portion of the surface of the specimen that will be in the grips, and interposing thin pieces of abrasive cloth, abrasive paper, or plastic or rubber-coated fabric, commonly called hospital sheeting, between the specimen and the grip surface. No. 80 double-sided abrasive paper has been found effective in many cases. An open-mesh fabric, in which the threads are coated with abrasive, has also been effective. Reducing the cross-sectional area of the specimen may also be effective. The use of special types of grips is sometimes necessary to eliminate slippage and breakage in the grips.

5.1.4 *Drive Mechanism* – A drive mechanism for imparting to the movable member a uniform, controlled velocity with respect to the stationary member, this velocity to be regulated as specificed in Section 9.

5.1.5 *Load Indicator* – A suitable load-indicating mechanism capable of showing the total tensile load carried by the test specimen when held by the grips. This mechanism shall be essentially free of inertia lag at the specified rate of testing and shall indicate the load with an accuracy of ±1 % of the indicated value, or better. The accuracy of the testing machine shall be verified in accordance with Method E 4.

NOTE 5 – Experience has shown that many testing machines now in use are incapable of maintaining accuracy for as long as the periods between inspection recommended in Methods E 4. Hence, it is recommended that each machine be studied individually and verified as often as may be found necessary. It frequently will be necessary to perform this function daily.

5.1.6 The fixed member, movable member, drive mechanism, and grips shall be constructed of such materials and in such proportions that the total elastic longitudinal strain of the system constituted by these parts does not exceed 1 % of the total longitudinal strain between the two gage marks on the test specimen at any time during the test and at any load up to the rated capacity of the machine.

5.2 *Extension Indicator* – A suitable instrument for determining the distance between two designated points located within the gage length of the test specimen as the specimen is stretched. It is desirable, but not essential, that this instrument automatically record this distance (or any change in it) as a function of the load on the test specimen or of the elapsed time from the start of the test, or both. If only the latter is obtained, load-time data must also be taken. This instrument shall be essentially free of inertia lag at the specified speed of testing and shall be accurate to ±1 % of strain or better.

NOTE 6 – Reference is made to Method E 83.

5.3 *Micrometers* – Suitable micrometers, reading to at least 0.025 ± *0.000 mm* (0.001 ± *0.000 in.*), for measuring the width and thickness of the test specimens. The thickness of nonrigid plastics should be measured with a dial micrometer that exerts a pressure of 25 ± kPa (3.6 ± 0.7 psi) on the specimen and measures the thickness to within 0.025 mm (0.001 in.). The anvil of the micrometer shall be at least 30 mm (1.4 in.) in diameter and parallel to the face of the contact foot.

6. Test Specimens

6.1 *Sheet, Plate, and Molded Plastics:*

6.1.1 *Rigid and Semirigid Plastics* – The test specimen shall conform to the dimensions shown in Fig. 1. The Type I specimen is the preferred specimen and shall be used where sufficient material having a thickness of 7 mm (0.28 in.) or less is available. The Type II specimen may be used when a material does not break in the narrow section with the preferred Type I specimen. The Type V specimen shall be used where only limited material having a thickness of 7 mm (0.28 in.) or less is available for evaluation, or where a large number of specimens are to be exposed in a limited space (thermal and environmental stability tests, etc.). The Type IV specimen should be used when direct comparisons are required between materials in different rigidity cases (that is, nonrigid and semirigid). The Type III specimen must be used for all materials with a thickness of greater than 7 mm (0.28 in.) but not more than 14 mm (0.55 in.).

6.1.2 *Nonrigid Plastics* – The test specimen shall conform to the dimensions shown in Fig. 1. The Type IV specimen shall be used for testing nonrigid plastics with a thickness of 7 mm (0.28 in.) or less. The Type III specimen must be used for all materials with a thickness greater than 7 mm (0.28 in.) but not more than 14 mm (0.55 in.).

6.1.3 *Preparation* – Test specimens shall be prepared by machining operations, or die cutting, from materials in sheet, plate, slab, or similar form. Materials thicker than 14 mm (0.55 in.) must be machined to 14 mm (0.55 in.) for use as Type III specimens. Specimens can also be prepared by molding the material to be tested.

NOTE 7 – Specimens prepared by injection molding may have different tensile properties than specimens prepared by machining or die-cutting because of the orientation induced. This effect may be more pronounced in specimens with narrow sections.

6.2 The test specimen for rigid tubes shall be as shown in Fig. 2. The length, L, shall be as shown in the table in Fig. 2. A groove shall be machined around the outside of the specimen at the center of its length so that the wall section after machining shall be 60 % of the original nominal wall thickness. This groove shall consist of a straight section 57.2 mm (2¼ in.) in length with a radius of 76 mm (3 in.) at each end joining it to the outside diameter. Steel or brass plugs having diameters such that they will fit snugly inside the tube and having a length equal to the full jaw length plus 25 mm (1 in.) shall be placed in the ends of the specimens to prevent crushing. They can be located conveniently in the tube by separating and supporting them on a threaded metal rod. Details of plugs and test assembly are shown in Fig. 2.

6.3 The test specimen for rigid rods shall be as shown in Fig. 3. The length, *L*, shall be as shown in the table in Fig. 3. A groove shall be machined around the specimen at the center of its length so that the diameter of the machined portion shall be 60 % of the original nominal diameter. This groove shall consist of a straight section 57.2 mm (2¹/₄ in.) in length with a radius of 76 mm (3 in.) at each end joining it to the outside diameter.

6.4 All surfaces of the specimen shall be free of visible flaws, scratches, or imperfections. Marks left by coarse machining operations shall be carefully removed with a fine file or abrasive, and the filed surfaces shall then be smoothed with abrasive paper (No. 00 or finer). The finishing sanding strokes shall be made in a direction parallel to the long axis of the test specimen. All flash shall be removed from a molded specimen, taking great care not to disturb the molded surfaces. In machining a specimen, undercuts that would exceed the dimensional tolerances shown in Fig. 1 shall be scrupulously avoided. Care shall also be taken to avoid other common machining errors.

6.5 If it is necessary to place gage marks on the specimen, this shall be done with a wax crayon or India ink that will not affect the material being tested. Gage marks shall not be scratched, punched, or impressed on the specimen.

6.6 When testing materials that are suspected of anisotropy, duplicate sets of test specimens shall be prepared, having their long axes respectively parallel with, and normal to, the suspected direction of anisotropy.

7. Conditioning

7.1 *Conditioning* – Condition the test specimens at 23 ± 2°C (73.4 ± 3.6°F) and 50 ± 5 % relative humidity for not less than 40 h prior to test in accordance with Procedure A of Methods D 618 for those tests where conditioning is required. In cases of disagreement, the tolerances shall be ±1°C (1.8°F) and ±2 % relative humidity.

7.2 *Test Conditions* – Conduct tests in the Standard Laboratory Atmosphere of 23 ± 2°C (73.4 ± 3.6°F) and 50 ± 5 % relative humidity, unless otherwise specified in the test methods. In cases of disagreements, the tolerances shall be ±1°C (1.8°F) and ±2 % relative humidity.

7.3 The tensile properties of some plastics change rapidly with small changes in temperature. Since heat may be generated as a result of straining the specimen at high rates, conduct tests without forced cooling to ensure uniformity of test conditions. Measure the temperature in the reduced section of the specimen and record it for materials where self-heating is suspected.

8. Number of Test Specimens

8.1 Test at least five specimens for each sample in the case of isotropic materials.

8.2 Test ten specimens, five normal to, and five parallel with the principal axis of anisotropy, for each sample in the case of anisotropic materials.

8.3 Discard specimens that break at some obvious fortuitous flaw, or that do not break between the predetermined gage marks, and make retests, unless such flaws constitute a variable to be studied.

NOTE 8 – Before testing, all transparent specimens should be inspected in a polariscope. Those which show atypical or concentrated strain patterns should be rejected, unless the effects of these residual strains constitute a variable to be studied.

9. Speed of Testing

9.1 Speed of testing shall be the relative rate of motion of the grips or test fixtures during the test. Rate of motion of the driven grip or fixture when the testing machine is running idle may be used, if it can be shown that the resulting speed of testing is within the limits of variation allowed.

9.2 Choose the speed of testing from Table 1. Determine this chosen speed of testing by the specification for the material being tested, or by agreement between those concerned. When the speed is not specified, use the lowest speed shown in Table 1 for the specimen geometry being used, which gives rupture within 1/2 to 5 min testing time.

9.3 Modulus determinations may be made at the speed selected for the other tensile properties when the recorder response and resolution are adequate.

10. Procedure

10.1 Measure the width and thickness of rigid flat specimens (Fig. 1) with a suitable micrometer to the nearest 0.025 mm (0.001 in.) at several points along their narrow sections. Measure the thickness of nonrigid specimens (produced by a Type IV die) in the same manner with the required dial micrometer. Take the width of this specimen as the distance between the cutting edges of the die in the narrow section. Measure the diameter of rod specimens, and the inside and outside diameters of tube specimens, to the nearest 0.025 mm (0.001 in.) at a minimum of two points 90 deg apart; make these measurements along the groove for specimens so constructed. Record the minimum values of cross-sectional area so determined. Use plugs in testing tube specimens, as shown in Fig. 2.

10.2 Place the specimen in the grips of the testing machine, taking care to align the long axis of the specimen and the grips with an imaginary line joining the points of attachment of the grips to the machine. The distance between the ends of the gripping surfaces, when using flat specimens, shall be as indicated in Fig. 1. On tube and rod specimens, the location for the grips shall be as shown in Fig. 2 and 3. Tighten the grips evenly and firmly to the degree necessary to prevent slippage of the specimen during the test, but not to the point where the specimen would be crushed.

10.3 Attach the extension indicator.

10.4 Set the speed of testing at the proper rate as required in Section 9, and start the machine.

10.5 Record the load-extension curve of the specimen.

10.6 Record the load and extension at the yield point (if one exists) and the load and extension at the moment of rupture.

NOTE 9 – If it is desired to measure both modulus and failure properties (yield or break, or both), it may be necessary, in the case of highly extensible materials to run two independent tests. The high magnification extensometer normally used to determine properties up to the yield point may not be suitable for tests involving high extensibility. If allowed to remain attached to the specimen, the extensometer could be permanently damaged. A broad range incremental extensometer or hand rule technique may be needed when such materials are taken to rupture.

11. Calculations

11.1 *Tensile Strength* – Calculate the tensile strength by dividing the maximum load in newtons (or pounds-force) by the original minimum cross-sectional area of the specimen in square metres (or square inches). Express the result in pascals (or pounds-force per square inch) and report it to three significant digures as "Tensile Strength at Yield" or "Tensile Strength at Break," whichever term is applicable. When a nominal yield or break load less than the maximum is present and applicable, it may be desirable also to calculate, in a similar manner, the corresponding" Tensile Stress at Yield" or "Tensile Stress at Break" and report it to three significant figures (Annex Note A1.1).

11.2 *Percent Elongation* – If the specimen gives a yield load that is larger than the load at break, calculate "Percent Elongation at Yield." Otherwise, calculate "Percent Elongation at Break." Do this by reading the extension (change in gage length) at the moment the applicable load is reached. Divide that extension by the original gage length and multiply by 100. Report "Percent Elongation at Yield" or "Percent Elongation at Break" to two significant figures. When a yield or breaking load less than the maximum is present and of interest, it is desirable to calculate and report both "Percent Elongation at Yield" and "Percent Elongation at Break" (Annex Note A1.2).

11.3 *Modulus of Elasticity* – Calculate the modulus of elasticity by extending the initial linear portion of the load-extension curve and dividing the difference in stress corresponding to any segment of section on this straight line by the corresponding difference in strain. All elastic modulus values shall be computed using the average initial cross-sectional area of the test specimens in the calculations. The result shall be expressed in pascals (or pounds-force per square inch) and reported to three significant figures.

11.4 For each series of tests, calculate the arithmetic mean of all values obtained and report it as the "average value" for the particular property in question.

11.5 Calculate the standard deviation (estimated) as follows and report it to two significant figures:

$$S = \sqrt{(\Sigma X^2 - n\bar{X}^2)/(n - 1)}$$

where:

s = estimated standard deviation,
X = value of single observation,
n = number of observations, and
$\bar{X}$ = arithmetic mean of the set of observations.

12. Report

12.1 The report shall include the following:

12.1.1 Complete identifications of the material tested, including type, source, manufacturer's code numbers, form, principal dimensions, previous history, etc.,

12.1.2 Method of preparing test specimens,

12.1.3 Type of test specimen and dimensions,

12.1.4 Conditioning procedure used,

12.1.5 Atmospheric conditions in test room,

12.1.6 Temperature rise in specimen,

12.1.7 Number of specimens tested,

12.1.8 Speed of testing,

12.1.9 Tensile strength at yield or break, average value and standard deviation,

12.1.10 Tensile stress at yield or break, if applicable, average value and standard deviation,

12.1.11 Percentage elongation at yield or break (or both, as applicable), average value and standard deviation,

12.1.12 Modulus of elasticity, average value and standard deviation, and

12.1.13 Date of test.

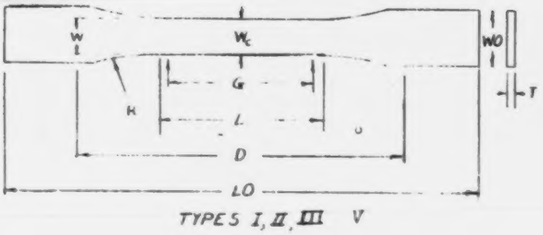
TABLE 1 Designations for Speed of Testing[A]

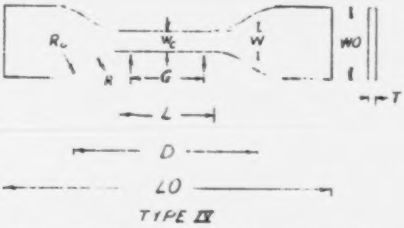
Classification[B]	Specimen Type	Speed of Testing, mm/min (in./min)	Nominal Strain[C] Rate at Start of Test, mm/mm · min
Rigid and Semirigid	I, II, III rods and tubes	5 (0.2) ± 25 %	0.1
		50 (2) ± 10 %	1
		500 (20) ± 10 %	10
	IV	5 (0.2) ± 25 %	0.15
		50 (2) ± 10 %	1.5
		500 (20) ± 10 %	15
	V	1 (0.05) ± 25 %	0.1
		10 (0.5) ± 25 %	1
		100 (5) ± 25 %	10
Nonrigid	III	50 (2) ± 10 %	1
		500 (20) ± 10 %	10
	IV	50 (2) ± 10 %	1.5
		500 (20) ± 10 %	15

[A] Select the lowest speed that produces rupture in ½ to 5 min for the specimen geometry being used (see 9.2).

[B] See Definitions D 883 for definitions.

[C] The initial rate of straining cannot be calculated exactly for dumbbell-shaped specimens because of extension, both in the reduced section outside the gage length and in the fillets. This initial strain rate can be measured from the initial slope of the tensile strain-versus-time diagram.





Specimen Dimensions for Thickness, T, mm[D]

Dimensions (see drawings)	7 or under		Over 7 to 14 incl.	4 or under		Tolerances
	Type I	Type II	Type III	Type IV[G]	Type V[I]	
W – Width of narrow section[A, B]	13	6	19	6	3.18	±0.5[G, I]
L – Length of narrow section	57	57	57	33	9.53	±0.5[I]
WO – Width over-all, min[E]	19	19	29	19	9.53	±6
LO – Length over-all, min[F]	165	183	246	115	63.5	no max
G – Gage length[C]	50	50	50	. . .	7.62	±0.25[I]
G – Gage length[C]	. . .	. . .	. . .	25	. . .	±0.13
D – Distance between grips	115	135	115	65	25.4	±5
R – Radius of fillet	76	76	76	14	12.7	±1[I]
RO – Outer radius (Type IV)	. . .	. . .	. . .	25	. . .	±1

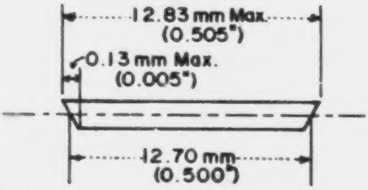
Specimen Dimensions for Thickness, T, in.[D]

Dimensions (see drawings)	0.28 or under		Over 0.28 to 0.55 incl.	0.16 or under		Tolerances
	Type I	Type II	Type III	Type IV[G]	Type V[I]	
W – Width of narrow section[A, B]	0.50	0.25	0.75	0.25	0.125	±0.02[G, I]
L – Length of narrow section	2.25	2.25	2.25	1.30	0.375	±0.02[I]
WO – Width over-all, min[E]	0.75	0.75	1.13	0.75	0.375	±0.25
LO – Length over-all, min[F]	6.5	7.2	9.7	4.5	2.5	no max
G – Gage length[C]	2.00	2.00	2.00	. . .	0.300	±0.010[I]
G – Gage length[C]	. . .	. . .	. . .	1.00	. . .	±0.005
D – Distance between grips	4.5	5.3	4.5	2.5	1.0	±0.2
R – Radius of fillet	3.00	3.00	3.00	0.56	0.5	±0.04[I]
RO – Outer radius (Type IV)	. . .	. . .	. . .	1.00	. . .	±0.04

FIG. 1 Tension Test Specimens for Sheet, Plate, and Molded Plastics.

[A] The width at the center W_c shall be plus 0.00 mm, minus 0.10 mm (+0.000 in., −0.004 in.) compared with width *W* at other parts of the reduced section. Any reduction in *W* at the center shall be gradual, equally on each side so that no abrupt changes in dimension result.

[B] For molded specimens, a draft of not over 0.13 mm (0.005 in.) may be allowed for either Type I or II specimens 3.2 mm (0.13 in.) in thickness, and this should be taken into account when calculating width of the specimen. Thus a typical section of a molded Type I specimen, having the maximum allowable draft, could be as follows:



[C] Test marks or initial extensometer span.

[D] Thickness, *T*, shall be 3.2 ± 0.4 mm (0.13 ± 0.02 in.) for all types of molded specimens, and for other Types I and II specimens where possible. If specimens are machined from sheets or plates, thickness, *T*, may be the thickness of the sheet or plate provided this does not exceed the range stated for the intended specimen type. For sheets of nominal thickness greater than 14 mm (0.55 in.) the specimens shall be machined to 14 ± 0.4 mm (0.55 ± 0.02 in.) in thickness, for use with the Type III specimen. For sheets of nominal thickness between 14 and 51 mm (0.55 and 2 in.) approximately equal amounts shall be machined from each surface. For thicker sheets both surfaces of the specimen shall be machined and the location of the specimen with reference to the original thickness of the sheet, shall be noted. Tolerances on thickness less than 14 mm (0.55 in.) shall be those standard for the grade of material tested.

[E] Overall widths greater than the minimum indicated may be desirable for some materials in order to avoid breaking in the grips.

[F] Overall lengths greater than the minimum indicated may be desirable either to avoid breaking in the grips or to satisfy special test requirements.

[G] For the Type IV specimen, the internal width of the narrow section of the die shall be 6.00 ± 0.05 mm (0.250 ± 0.002 in.). The dimensions are essentially those of Die C in ASTM Method D 412, for Rubber Properties in Tension (*Annual Book of ASTM Standards*, Parts 35 and 37).

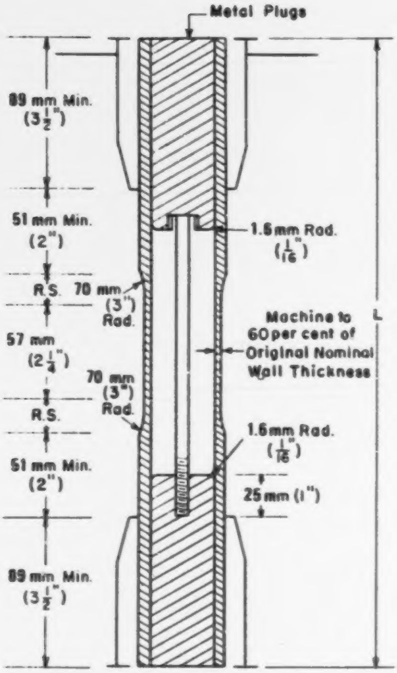
[H] When self-tightening grips are used, for highly extensible polymers, the distance between grips will depend upon the types of grips used and may not be critical if maintained uniform once chosen.

[I] The Type V specimen shall be machined or die cut to the dimensions shown, or molded in a mold whose cavity has these dimensions. The dimensions shall be:

W = 3.18 ± 0.03 mm (0.125 ± 0.001 in.),
L = 9.53 ± 0.08 mm (0.375 ± 0.003 in.),
G = 7.62 ± 0.02 mm (0.300 ± 0.001 in.), and
R = 12.7 ± 0.08 mm (0.500 ± 0.003 in.).

The other tolerances are those in the table. Supporting data on the introduction of the L specimen as the Type V specimen may be obtained from ASTM Headquarters, 1916 Race St., Philadelphia, Pa. 19103, by requesting RR:D-20-1038.

FIG. 1—*Continued.*


Metal Plugs
89 mm Min.
($3\frac{1}{2}$")
51 mm Min.
(2")
R.S.
70 mm
(3")
Rad.
57 mm
($2\frac{1}{4}$")
70 mm
(3")
Rad.
R.S.
51 mm Min.
(2")
89 mm Min.
($3\frac{1}{2}$")
1.6mm Rad.
($\frac{1}{16}$")
Machine to
60 per cent of
Original Nominal
Wall Thickness
L
1.6mm Rad.
($\frac{1}{16}$")
25 mm (1")

DIMENSIONS OF TUBE SPECIMENS

Nominal Wall Thickness	Length of Radial Sections, 2R.S.	Total Calculated Minimum Length of Specimen	Standard Length, *L*, of Specimen to be Used for 89-mm ($3^1/_2$-in.) Jaws
mm(in.)	mm(in.)	mm(in.)	mm(in.)
0.79($^1/_{32}$)	13.9(0.547)	350(13.80)	381(15)
1.2($^3/_{64}$)	17.0(0.670)	354(13.92)	381(15)
1.6($^1/_{16}$)	19.6(0.773)	356(14.02)	381(15)
2.4($^3/_{32}$)	24.0(0.946)	361(14.20)	381(15)
3.2($^1/_8$)	27.7(1.091)	364(14.34)	381(15)
4.8($^3/_{16}$)	33.9(1.333)	370(14.58)	381(15)
6.4($^1/_4$)	39.0(1.536)	376(14.79)	400(15.75)
7.9($^5/_{16}$)	43.5(1.714)	380(14.96)	400(15.75)
9.5($^3/_8$)	47.6(1.873)	384(15.12)	400(15.75)
11.1($^7/_{16}$)	51.3(2.019)	388(15.27)	400(15.75)
12.7($^1/_2$)	54.7(2.154)	391(15.40)	419(16.5)

[a] For other jaws greater than 89 mm ($3^1/_2$ in.), the standard length shall be increased by twice the length of the jaws minus 178 mm (7 in.). The standard length permits a slippage of approximately 6.4 to 12.7 mm ($^1/_4$ to $^1/_2$ in.) in each jaw while maintaining maximum length of jaw grip.

FIG. 2 Diagram Showing Location of Tube Tension Test Specimens in Testing Machine.

The stress at the point of intersection *r* is the "offset yield strength." The specified value of the offset must be stated as a percentage of the original gage length in conjunction with the strength value. *Example:* 0.1 % offset yield strength = . . . MPa (psi), or *yield strength* at 0.1 % offset . . . MPa (psi).

A1.14 *proportional limit* – the greatest stress which a material is capable of sustaining without any deviation from proportionality of stress to strain (Hooke's law). It is expressed in force per unit area, usually megapascals (or pounds-force per square inch).

A1.15 *elastic limit* – the greatest stress which a material is capable of sustaining without any permanent strain remaining upon complete release of the stress. It is expressed in force per unit area, usually megapascals (or pounds-force per square inch).

Note A1.6 – Measured values of proportional limit and elastic limit vary greatly with the sensitivity and accuracy of the testing equipment, eccentricity of loading, the scale to which the stress-strain diagram is plotted, and other factors. Consequently, these values are usually replaced by yield strength.

A1.16 *modulus of elasticity* – the ratio of stress (nominal) to corresponding strain below the proportional limit of a material. It is expressed in force per unit area, usually megapascals (or pounds-force per square inch) (Also known as *elastic modulus* or *Young's modulus*).

Note A1.7 – The stress-strain relations of many plastics do not conform to Hooke's law throughout the elastic range but deviate therefrom even at stresses well below the elastic limit. For such materials the slope of the tangent to the stress-strain curve at a low stress is usually taken as the modulus of elasticity. Since the existence of a true proportional limit in plastics is debatable, the propriety of applying the term "modulus of elasticity" to describe the stiffness or rigidity of a plastic has been seriously questioned. The exact stress-strain characteristics of plastic materials are very dependent on such factors as rate of stressing, temperature, previous specimen history, etc. However, such a value is useful if its arbitrary nature and dependence on time, temperature, and other factors are realized.

A1.17 *secant modulus* – the ratio of stress (nominal) to corresponding strain at any specified point on the stress-strain curve. It is expressed in force per unit area, usually megapascals (or pounds-force per square inch), and reported together with the specified stress or strain.

Note A1.8 – This measurement is usually employed in place of modulus of elasticity in the case of materials whose stress-strain diagram does not demonstrate proportionality of stress to strain.

A1.18 *percentage reduction of area (nominal)* – the difference between the original cross-sectional area measured at the point of rupture after breaking and after all retraction has ceased, expressed as a percentage of the original area.

A1.19 *percentage reduction of area (true)* – the difference between the original cross-sectional area of the test specimen and the minimum cross-sectional area within the gage boundaries prevailing at the moment of rupture, expressed as a percentage of the original area.

A1.20 *rate of loading* – the change in tensile load carried by the specimen per unit time. It is expressed in force per unit time, usually newtons (or pounds-force) per minute. The initial rate of loading can be calculated from the initial slope of the load versus time diagram.

A1.21 *rate of stressing (nominal)* – the change in tensile stress (nominal) per unit time. It is expressed in force per unit area per unit time, usually megapascals (or pounds-force per square inch) per minute. The initial rate of stressing can be calculated from the initial slope of the tensile stress (nominal) versus time diagram.

Note A1.9 – The initial rate of stressing as determined in this manner has only limited physical significance. It does, however, roughly describe the average rate at which the initial stress (nominal) carried by the test specimen is applied. It is affected by the elasticity and flow characteristics of the materials being tested. At the yield point, the rate of stressing (true) may continue to have a positive value if the cross-sectional area is decreasing.

A1.22 *rate of straining* – the change in tensile strain per unit time. It is expressed either as strain per unit time, usually metres per metre (or inches per inch) per minute, or percentage elongation per unit time, usually percentage elongation per minute. The initial rate of straining can be calculated from the initial slope of the tensile strain versus time diagram.

Note A1.10 – The initial rate of straining is synonymous with the rate of crosshead movement divided by the initial distance between crossheads only in a machine with constant-rate-of-crosshead movement and when the specimen has a uniform original cross-section, does not "neck down," and does not slip in the jaws.

A1.23 *Symbols* – The following symbols may be used for the above terms:

Symbol	Term
W	Load
ΔW	Increment of load
L	Distance between gage marks at any time
L_o	Original distance between gage marks
L_u	Distance between gage marks at moment of rupture
ΔL	Increment of distance between gage marks = elongation
A	Minimum cross-sectional area at any time
A_o	Original cross-section area
ΔA	Increment of cross-sectional area
A_u	Cross-sectional area at point of rupture measured after breaking specimen
A_T	Cross-sectional area at point of rupture, measured at the moment of rupture
t	Time
Δt	Increment of time
σ	Tensile stress
$\Delta\sigma$	Increment of stress
σ_T	True tensile stress
σ_U	Tensile strength at break (nominal)
σ_{UT}	Tensile strength at break (true)
ϵ	Strain

$\Delta\epsilon$	Increment of strain
ϵ_U	Total strain, at break
ϵ_T	True strain
$\%El$	Percentage elongation
Y.P.	Yield point
E	Modulus of elasticity

A1.24 Relations between these various terms may be defined as follows:

$$\sigma = W/A_o$$

$$\sigma_T = W/A$$

$$\sigma_U = W/A_o \text{ (where } W \text{ is breaking load)}$$

$$\sigma_{UT} = W/A_T \text{ (where } W \text{ is breaking load)}$$

$$\epsilon = \Delta L/L_o = (L - L_o)/L_o$$

$$\epsilon_U = (L_u - L_o)/L_o$$

$$\epsilon_T = \int_{L_o}^{L} dL/L = \ln L/L_o$$

$$\%El = [(L - L_o)/L_o] \times 100 = \epsilon \times 100$$

Percentage reduction of area (nominal)

$$= [(A_o - A_u)/A_o] \times 100$$

Percentage reduction of area (true)

$$= [(A_o - A_T)/A_o] \times 100$$

Rate of loading $= \Delta W/\Delta t$

Rate of stressing (nominal) $= \Delta\sigma/\Delta t = (\Delta W/A_o)/\Delta t$

Rate of straining $= \Delta\epsilon/\Delta t = (\Delta L/L_o)\Delta t$

For the case where the volume of the test specimen does not change during the test, the following three relations hold:

$$\sigma_T = \sigma(1 + \epsilon) = \sigma L/L_o$$

$$\sigma_{UT} = \sigma_U(1 + \epsilon_U) = \sigma_U L_u/L_o$$

$$A = A_o/(1 + \epsilon)$$

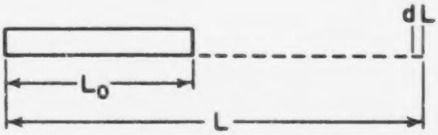


FIG. A1.1 Illustration of True Strain Equation.

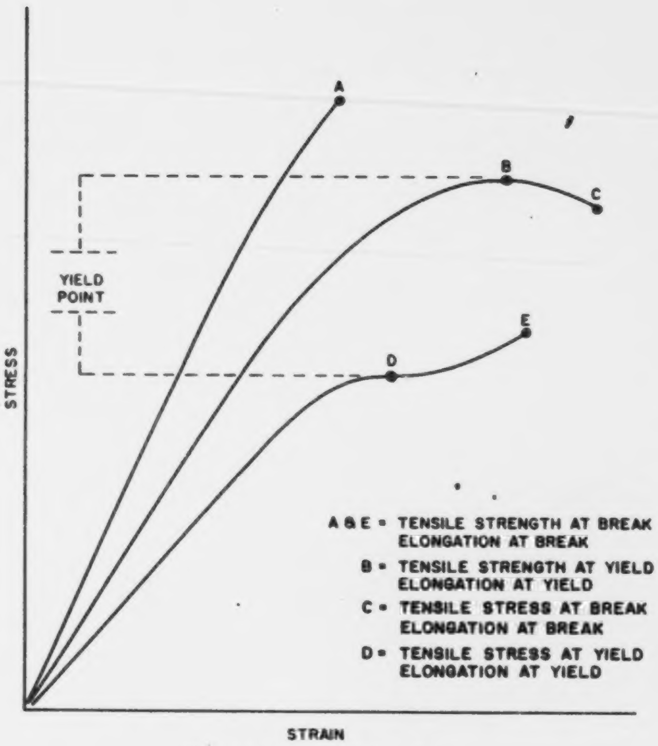

A
B
C
YIELD POINT
E
D
STRESS
A & E = TENSILE STRENGTH AT BREAK ELONGATION AT BREAK
B = TENSILE STRENGTH AT YIELD ELONGATION AT YIELD
C = TENSILE STRESS AT BREAK ELONGATION AT BREAK
D = TENSILE STRESS AT YIELD ELONGATION AT YIELD
STRAIN

FIG. A1.2 Tensile Designations.

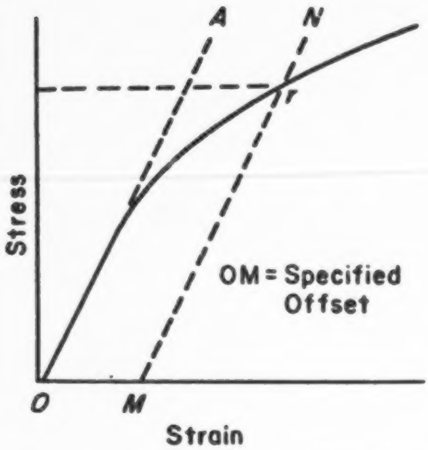


FIG. A1.3 Offset Yield Strength.

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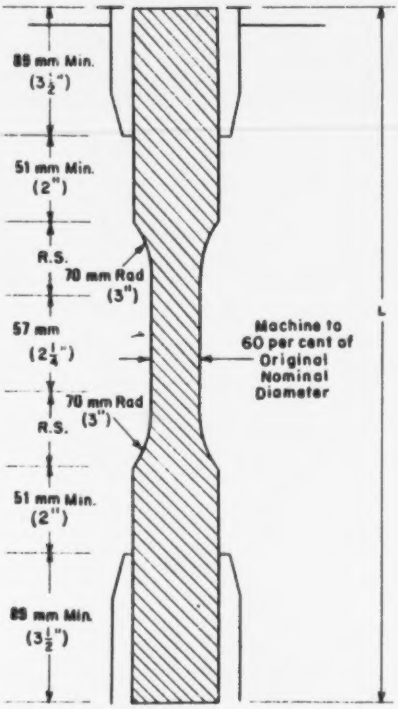
89 mm Min.
(3½")
51 mm Min.
(2")
R.S.
70 mm Rad
(3")
57 mm
(2¼")
70 mm Rad
(3")
R.S.
51 mm Min.
(2")
89 mm Min.
(3½")
Machine to
60 per cent of
Original
Nominal
Diameter
L

DIMENSIONS OF ROD SPECIMENS

Nominal Diameter	Length of Radial Sections, 2R.S.	Total Calculated Minimum Length of Specimen	Standard Length, *L*, of Specimen to be Used for 89-mm (3 1/2-in.) Jaws
mm (in.)	mm (in.)	mm (in.)	mm (in.)
3.2 (1/8)	19.6 (0.773)	356 (14.02)	381 (15)
4.7 (1/16)	24.0 (0.946)	361 (14.20)	381 (15)
6.4 (1/4)	27.7 (1.091)	364 (14.34)	381 (15)
9.5 (3/8)	33.9 (1.333)	370 (14.58)	381 (15)
12.7 (1/2)	39.0 (1.536)	376 (14.79)	400 (15.75)
15.9 (5/8)	43.5 (1.714)	380 (14.96)	400 (15.75)
19.0 (3/4)	47.6 (1.873)	384 (15.12)	400 (15.75)
22.2 (7/8)	51.5 (2.019)	388 (15.27)	400 (15.75)
25.4 (1)	54.7 (2.154)	391 (15.40)	419 (16.5)
31.8 (1 1/4)	60.9 (2.398)	398 (15.65)	419 (16.5)
38.1 (1 1/2)	66.4 (2.615)	403 (15.87)	419 (16.5)
42.5 (1 3/4)	71.4 (2.812)	408 (16.06)	419 (16.5)
50.8 (2)	76.0 (2.993)	412 (16.24)	432 (17)

[a] For other jaws greater than 89 mm (3 1/2 in.), the standard length shall be increased by twice the length of the jaws minus 178 mm (7 in.). The standard length permits a slippage of approximately 6.4 to 12.7 mm (1/4 to 1/2 in.) in each jaw while maintaining maximum length of jaw grip.

FIG. 3 Diagram Showing Location of Rod Tension Test Specimen in Testing Machine.

ANNEX

A1. DEFINITIONS OF TERMS AND SYMBOLS RELATING TO TENSION TESTING OF PLASTICS

A1.1 *tensile stress (nominal)* – the tensile load per unit area of minimum original cross-section, within the gage boundaries, carried by the test specimen at any given moment. It is expressed in force per unit area, usually megapascals (or pounds-force per square inch).

Note A1.1 – The expression of tensile properties in terms of the minimum original cross-section is almost universally used in practice. In the case of materials exhibiting high extensibility, or "necking", or both, (A1.11) nominal stress calculations may not be meaningful beyond the yield point (A1.10) due to the extensive reduction in cross-sectional area that ensues. Under some circumstances it may be desirable to express the tensile properties per unit of minimum prevaling cross-section. These properties are called "true" tensile properties (that is, true tensile stress, etc.).

A1.2 *tensile strength (nominal)* – the maximum tensile stress (nominal) sustained by the specimen during a tension test. When the maximum stress occurs at the yield point (A1.10), it shall be designated Tensile Strength at Yield. When the maximum stress occurs at break, it shall be designated Tensile Strength at Break.

A1.3 *gage length* – the original length of that portion of the specimen over which strain or change in length is determined.

A1.4 *elongation* – the increase in length produced in the gage length of the test specimen by a tensile load. It is expressed in units of length, usually millimetres (or inches). (Also known as *extension*.)

Note 1.2 – Elongation and strain values are valid only in cases were uniformity of specimen behavior within the gage length is present. In the case of materials exhibiting "necking phenomena," such values are only of qualitative utility after attainment of "yield" point. This is due to inability to assure that necking will encompass the entire length between the gage marks prior to specimen failure.

A1.5 *percentage elongation* – the elongation of a test specimen expressed as a percentage of the gage length.

A1.6 *percentage elongation at yield and break:*

A1.6.1 *percentage elongation at yield* – the percentage elongation at the moment the yield point (A1.10) is attained in the test specimen.

A1.6.2 *percentage elongation at break* – the percentage elongation at the moment of rupture of the test specimen.

A1.7 *strain* – the ratio of the elongation to the gage length of the test specimen, that is, the change in length per unit of original length. It is expressed as a dimensionless ratio.

A1.8 *true strain* (see Fig. A1.1) is defined by the following equation for ϵ_T:

$$\epsilon_T = \int_{L_o}^{L} dL/L = \ln L/L_o$$

where:
dL = the increment of elongation when the distance between the gage marks is L,
L_o = the original distance between gage marks, and
L = the distance between gage marks at any time.

A1.9 *tensile stress-strain curve* – a diagram in which values of tensile stress are plotted as ordinates against corresponding values of tensile strain as abscissas.

A1.10 *yield point* – the first point on the stress-strain curve at which an increase in strain occurs without an increase in stress (Fig. A1.2).

Note A1.3 – Only materials whose stress-strain curves exhibit a point of zero slope may be considered as having a yield point.

Note A1.4 – Some materials exhibit a distinct "break" or discontinuity in the stress-strain curve in the elastic region. This break is not a yield point by definition. However, this point may prove useful for material characterization in some cases.

A1.11 *necking* – the localized reduction in cross-section which may occur in a material under tensile stress.

A1.12 *yield strength* – the stress at which a material exhibits a specified limiting deviation from the proportionality of stress to strain. Unless otherwise specified, this stress will be the stress at the yield point and when expressed in relation to the Tensile Strength shall be designated either Tensile Strength at Yield or Tensile Stress at Yield as required under A1.2 (Fig. A1.2). (See *offset yield strength*.)

A1.13 *offset yield strength* – the stress at which the strain exceeds by a specified amount (the offset) an extension of the initial proportional portion of the stress-strain curve. It is expressed in force per unit area, usually megapascals (or pounds-force per square inch).

Note A1.5 – This measurement is useful for materials whose stress-strain curve in the yield range is of gradual curvature. The offset yield strength can be derived from a stress-strain curve as follows (Fig. A1.3):

On the strain axis lay off *OM* equal to the specified offset.

Draw *OA* tangent to the initial straight-line portion of the stress-strain curve.

Through *M* draw a line *MN* parallel to *OA* and locate the intersection of *MN* with the stress-strain curve.

Exhibit "B"

AMERICAN NATIONAL STANDARD ANSI/ASTM D 790 - 71

Standard Test Methods for
FLEXURAL PROPERTIES OF PLASTICS AND ELECTRICAL INSULATING MATERIALS[1]

This Standard is issued under the fixed designation D 790; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval.

This method has been approved for use by agencies of the Department of Defense to replace method 1031 of Federal Test Method Standard 406 and for listing in the DoD Index of Specifications and Standards.

1. Scope

1.1 These methods cover the determination of flexural properties of plastics and electrical insulating materials in the form of rectangular bars molded directly or cut from sheets, plates, or molded shapes. These methods are generally applicable to rigid and semirigid materials. However, flexural strength cannot be determined for those materials that do not break or that do not fail in the outer fibers. Two methods of test are described as follows:

1.1.1 *Method I* A three-point loading system utilizing center loading on a simply supported beam.

1.1.2 *Method II* A four-point loading system utilizing two load points equally spaced from their adjacent support points, with a distance between load points of one third of the support span.

1.2 Either method can be used with the two procedures which follow:

1.2.1 *Procedure A*, designed principally for materials that break at comparatively small deflections.

1.2.2 *Procedure B*, designed particularly for those materials that undergo large deflections during testing.

1.3 Comparative tests may be run according to either method or procedure, provided that method or procedure is found satisfactory for the material being tested.

NOTE 1—The values stated in SI units are to be regarded as the standard.

2. Summary of Methods

2.1 A bar of rectangular cross section is tested in flexure as a beam as follows:

2.1.1 *Method I* - The bar rests on two supports and is loaded by means of a loading nose midway between the supports (see Fig. 1).

2.1.2 *Method II* - The bar rests on two supports and is loaded at two points (by means of two loading noses), each an equal distance from the adjacent support point. The distance between the loading noses is one third of the support span (see Fig. 2).

2.2 The specimen is deflected until rupture occurs in the outer fibers or until the maximum fiber strain (see 10.9) of 5 percent is reached, whichever occurs first.

3. Significance

3.1 Flexural properties determined by Method I are especially useful for quality control and specification purposes.

3.2 Materials that do not fail at the point of maximum stress under Method I should be tested by Method II. Flexural properties determined by Method II are also useful for quality control and specification purposes. The basic difference between the two methods is in the location of the maximum bending moment and maximum axial fiber stresses. The maximum axial fiber stresses occur on a line under the loading nose in Method I and over the area between the loading noses in Method II.

3.3 Flexural properties may vary with specimen depth, temperature, atmospheric conditions, and the difference in rate of straining specified in Procedures A and B (see also Note 7).

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[1] These methods are under the jurisdiction of ASTM Committee D-20 on Plastics and are the direct responsibility of Subcommittee D-20.10 on Mechanical Properties.

Current edition effective Oct. 29, 1971. Originally issued 1944. Replaces D 790 - 70.

4. Apparatus

4.1 *Testing Machine* A properly calibrated testing machine that can be operated at constant rates of crosshead motion over the range indicated, and in which the error in the load measuring system shall not exceed ±1 percent of maximum load expected to be measured. It shall be equipped with a deflection-measuring device. The stiffness of the testing machine shall be such that the total elastic deformation of the system does not exceed 1 percent of the total deflection of the test specimen during test, or appropriate corrections shall be made. The load-indicating mechanism shall be essentially free from inertial lag at the crosshead rate used. The accuracy of the testing machine shall be verified in accordance with ASTM Methods E 4, Verification of Testing Machines.[2]

4.2 *Loading Noses and Supports* The loading nose or noses and supports shall have cylindrical surfaces. In order to avoid excessive indentation, or failure due to stress concentration directly under the loading nose or noses, the radius of the nose or noses and supports shall be at least 3.2 mm ($^{1}/_{8}$ in.) for all specimens. For specimens 3.2 mm ($^{1}/_{8}$ in.) or greater in depth the radius of the supports may be up to 1.5 times the specimen depth. They shall be this large if significant indentation or compressive failure occurs. The arc of the loading nose in contact with the specimen shall be sufficiently large to prevent contact of the specimen with the sides of the nose or noses (see Fig. 1 for Method I, Fig. 3 for Method II).

5. Test Specimens

5.1 The specimens may be cut from sheets, plates, or molded shapes, or may be molded to the desired finished dimensions.

NOTE 2—Any necessary polishing of specimens shall be done only in the lengthwise direction of the specimen.

5.2 *Sheet Materials* (except laminated thermosetting materials and certain materials used for electrical insulation, including vulcanized fiber and glass bonded mica):

5.2.1 *Materials 1.6 mm ($^{1}/_{16}$ in.) or Greater in Thickness* For flatwise tests the depth of the specimen shall be the thickness of the material. For edgewise tests, the width of the specimen shall be the thickness of the sheet and the depth shall not exceed the width (see Notes 3 and 4). For all tests, the support span shall be 16 (tolerance +4 or −2) times the depth of the beam. Specimen width shall not exceed one-fourth of the support span for specimens greater than 3.2 mm ($^{1}/_{8}$ in.) in depth. Specimens 3.2 mm ($^{1}/_{8}$ in.) or less in depth shall be 12.7 mm ($^{1}/_{2}$ in.) in width. The specimen shall be long enough to allow for overhanging on each end of at least 10 percent of the support span, but in no case less than 6.4 mm ($^{1}/_{4}$ in.) on each end. Overhang shall be sufficient to prevent the specimen from slipping through the supports.

NOTE 3 Whenever possible, the original surface of the sheet shall be unaltered. However, where testing machine limitations make it impossible to follow the above criterion on the unaltered sheet, one or both surfaces shall be machined to provide the desired dimensions, and the location of the specimens with reference to the total depth shall be noted. The value obtained on specimens with machined surfaces may differ from those obtained on specimens with original surfaces. Consequently, any specifications for flexural properties on the thicker sheets must state whether the original surfaces are to be retained or not. When only one surface was machined, it must be stated whether the machined surface was on the tension or compression side of the beam.

NOTE 4 Edgewise tests are not applicable for sheets that are so thin that specimens meeting these requirements cannot be cut. If specimen depth exceeds the width, buckling may occur.

5.2.2 *Materials Less than 1.6 mm ($^{1}/_{16}$ in.) in Thickness* The specimen shall be 50.8 mm (2 in.) long by 12.7 mm ($^{1}/_{2}$ in.) wide, tested flatwise on a 25.4-mm (1-in.) support span.

NOTE 5 Use of the formulas for simple beams cited in these methods for calculating results presumes that beam width is small in comparison with the support span. Therefore, the formulas do not apply rigorously to these dimensions.

NOTE 6—Where machine sensitivity is such that specimens of these dimensions cannot be measured, wider specimens or shorter support spans, or both may be used, provided the support span-to-depth ratio is at least 14 to 1. All dimensions must be stated in the report (see also Note 5).

5.3 *Laminated Thermosetting Materials and Sheet and Plate Materials Used for Electrical Insulation, Including Vulcanized Fiber and Glass-Bonded Mica* Test specimens in accordance with Table 1 for Method I, and

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[2] *Annual Book of ASTM Standards*, Part 35.

Table 2 for Method II, as shown in the Appendix, which constitutes a part of these methods of test. For paper-base and fabric-base grades over 25.4 mm (1 in.) in nominal thickness, the specimens shall be machined on both surfaces to a depth of 25.4 mm (1 in.). For glass-base and nylon-base grades, specimens over 12.7 mm ($^1/_2$ in.) in nominal depth shall be machined on both surfaces to a depth of 12.7 mm ($^1/_2$ in.). The support span-to-depth ratio shall be chosen such that failures occur in the outer fibers of the specimens, due only to the bending moment (Note 7). Three recommended support span-to-depth ratios are 16, 32 and 40 to 1. When laminated materials exhibit low compressive strength perpendicular to the laminations, they shall be loaded with a large radius loading nose (up to 4 times the specimen depth for Method I and 1.5 times the specimen depth for Method II) to prevent premature damage to the outer fibers.

5.4 *Molding Materials* (*Thermoplastics and Thermosets*)—The recommended specimen for molding materials is 127 by 12.7 by 6.4 mm (5 by $^1/_2$ by $^1/_4$ in.) tested flatwise on a support span, resulting in a support span-to-depth ratio of 16 (tolerance +4 or −2).

5.5 *High-Strength Reinforced Composites, Including Highly Orthotropic Laminates*—Specimens shall be tested in accordance with Table 1 for Method I, and Table 2 for Method II, as shown in the Appendix, which constitutes a part of these methods of test. The support span-to-depth ratio shall be chosen such that failures occur in the outer fibers of the specimens, due only to the bending moment (Note 7). Three recommended support span-to-depth ratios are 16, 32, and 40 to 1. When laminated materials exhibit low compressive strength perpendicular to the laminations, they shall be loaded with a large radius loading nose (up to 4 times the specimen depth for Method I and 1.5 times the specimen depth for Method II) to prevent damage to the outer fibers.

NOTE 7—As a general rule, support span-to-depth ratios of 16 are satisfactory when the ratio of the tensile strength to shear strength is less than 8 to 1, but the support span-to-depth ratio must be increased for composite laminates having relatively low shear strength in the plane of the laminate and relatively high tensile strength parallel to the support span.

6. Number of Test Specimens

6.1 At least five specimens shall be tested for each sample in the case of isotropic materials or molded specimens.

6.2 For each sample of anisotropic material in sheet form, at least five specimens shall be tested for each of the following conditions. Recommended conditions are flatwise and edgewise tests on specimens cut in lengthwise and crosswise directions of the sheet. For purposes of this test, "lengthwise" shall designate the principal axis of anisotropy and shall be interpreted to mean the direction of the sheet known to be stronger in flexure. "Crosswise" shall be the sheet direction known to be the weaker in flexure, and shall be at 90 deg to the lengthwise direction.

7. Conditioning

7.1 *Conditioning*—Condition the test specimens at 23 ± 2C (73.4 ± 3.6 F) and 50 ± 5 percent relative humidity for not less than 40 h prior to test in accordance with Procedure A of ASTM Methods D 618, Conditioning Plastics and Electrical Insulating Materials for Testing,[2] for those tests where conditioning is required. In cases of disagreement, the tolerances shall be ±1 C (±1.8 F) and ±2 percent relative humidity.

7.2 *Test Conditions*—Conduct tests in the Standard Laboratory Atmosphere of 23 ± 2 C (73.4 ± 3.6 F) and 50 ± 5 percent relative humidity, unless otherwise specified in the test methods or in this specification. In cases of disagreement, the tolerances shall be ±1 C (±1.8 F) and ±2 percent relative humidity.

8. Procedure

8.1 *Method I—Procedure A:*

8.1.1 Use an untested specimen for each measurement. Measure the width and depth of the specimen to the nearest 0.03 mm (0.001 in.) at the center of the support span. For specimens less than 2.54 mm (0.100 in.) in depth, measure the depth to the nearest 0.003 mm (0.0001 in.).

8.1.2 Determine the support span to be used as described in Section 5 and set the support span to within 1 percent of the determined value.

8.1.3 If Table 1 is used, set the machine to the specified rate of crosshead motion, or as near as possible to it. If Table 1 is not used, calculate the rate of crosshead motion as follows and set the machine for the calculated rate, or as near as possible to it:

$$R = ZL^2/6d \qquad (1)$$

where:

R = rate of crosshead motion, mm (in.)/min,
L = support span, mm (in.),
d = depth of beam, mm (in.), and
Z = rate of straining of the outer fiber, mm/mm · min (in./in · min). Z shall equal 0.01.

In no case shall the actual crosshead rate differ from that specified by Table 1, or that calculated from Eq 1, by more than ±50 percent.

8.1.4 Align the loading nose and supports so that the axes of the cylindrical surfaces are parallel and the loading nose is midway between the supports. This parallelism may be checked by means of a plate with parallel grooves into which the loading nose and supports will fit when properly aligned. Center the specimen on the supports, with the long axis of the specimen perpendicular to the loading nose and supports.

8.1.5 Apply the load to the specimen at the specified crosshead rate, and take simultaneous load-deflection data. Measure deflection either by a gage under the specimen in contact with it at the center of the support span, the gage being mounted stationary relative to the specimen supports, or by measurement of the motion of the loading nose relative to the supports. In either case, make appropriate corrections for indentation in the specimens and deflections in the weighing system of the machine. Load-deflection curves may be plotted to determine the flexural yield strength, secant or tangent modulus of elasticity, and the total work measured by the area under the load-deflection curve.

8.1.6 Terminate the test if the maximum strain in the outer fibers has reached 0.05 mm/mm (in./in.) (Notes 8 and 9). The deflection at which this strain occurs may be calculated by letting r equal 0.05 mm/mm (in./in.) as follows:

$$D = rL^2/6d \qquad (2)$$

where:

D = deflection, mm (in.),
r = strain, mm/mm (in./in.),
L = support span, mm (in.), and
d = depth of beam, mm (in.).

NOTE 8 For some materials the increase in strain rate provided under Procedure B may induce the specimen to yield or rupture, or both, within the required 5 percent strain limit.

NOTE 9 Beyond 5 percent strain, these methods are not applicable, and some other property might be measured (for example ASTM Method D 638, Test for Tensile Properties of Plastics,[2] may be considered).

8.2 *Method II – Procedure A:*

8.2.1 See 8.1.1.

8.2.2 See 8.1.2.

8.2.3 If Table 2 is used, set the machine for the specified rate of crosshead motion, or as near as possible to it. If Table 2 is not used, calculate the rate of crosshead motion as follows and set the machine as near as possible to that calculated rate:

$$R = 0.21ZL^2/d \qquad (1a)$$

where:

R = rate of crosshead motion, mm (in.)/min,
L = support span, mm (in.),
d = depth of beam, mm (in.), and
Z = rate of straining of the outer fibers, mm/mm (in./in.) · min, Z shall equal 0.01.

In no case shall the actual crosshead rate differ from that specified by Table 2, or that calculated from Eq 1a by more than ±50 percent.

8.2.4 Align the loading noses and supports so that the axes of the cylindrical surfaces are parallel and the distance between the loading noses (that is load span) is one third of the support span. This parallelism may be checked by means of a plate containing parallel grooves into which the loading noses and supports will fit when properly aligned. Center the specimen on the supports, with the long axis of the specimen perpendicular to the loading noses and supports. The loading nose assembly shall be of the type which will not rotate.

8.2.5 Apply the load to the specimen at the specified crosshead rate, and take simultaneous load-deflection data. Measure deflection by a gage under the specimen in contact with it at the common center of the spans, the gage being mounted stationary relative to the specimen supports. Make appropriate corrections for indentation in the specimens and deflections in the weighing system of the machine. Load-deflection curves may be plotted to determine the flexural yield strength, secant or tangent modulus of elasticity, and the total work measured by the area under the load-deflection curve.

8.2.6 If no break has occurred in a specimen by the time the maximum strain in the outer fibers has reached 0.05 mm/mm (in./in.), discontinue the test (Notes 8 and 9). The deflection at which this strain occurs may be calculated by letting r equal 0.05 mm/mm (in./in.) as follows:

$$D = 0.21rL^2/d \tag{2a}$$

where:

D = deflection mm (in.),
r = strain, mm per mm (in. per in.),
L = support span, mm (in.), and
d = depth of beam, mm (in.)

8.3 *Methods I and II, Procedure B:*

8.3.1 Use an untested specimen for each measurement.

8.3.2 Text conditions shall be identical to those described in 8.1 or 8.2 except that the rate of straining of the outer fibers shall be 0.10 mm/mm (in./in.)/min.

8.3.3 If no break has occurred in the specimen by the time the maximum strain in the outer fibers has reached 0.05 mm/mm (in./in.), discontinue the test (Note 9).

9. Retests

9.1 Values for properties at rupture shall not be calculated for any specimen that breaks at some obvious, fortuitous flaw, unless such flaws constitute a variable being studied. Retests shall be made for any specimen on which values are not calculated.

10. Calculations

10.1 *Maximum Fiber Stress, Method I*—When a beam of homogeneous, elastic material is tested in flexure as a simple beam supported at two points and loaded at the midpoint, the maximum stress in the outer fibers occurs at midspan. This stress may be calculated for any point on the load-deflection curve by the following equation (Notes 10 and 11):

$$S = 3PL/2bd^2 \tag{3}$$

where:

S = stress in the outer fibers at midspan, N/m² (psi),
P = load at a given point on the load-deflection curve, N (lbf),
L = support span, m (in.),
b = width of beam tested, m (in.), and
d = depth of beam tested, m (in.).

NOTE 10—Equation 3 applies strictly to materials for which the stress is linearly proportional to strain up to the point of rupture and for which the strains are small. Since this is not always the case, a slight error will be introduced in the use of this equation. The equation will, however, be valid for comparison data and specification values up to the maximum fiber strain of 5 percent for specimens tested by the procedure herein described.

NOTE 11—The above calculation is not valid if the specimen is slipping excessively between the supports.

10.2 *Maximum Fiber Stress for Beams Tested at Large Support Spans, Method I*—If support span-to-depth ratios greater than 16 to 1 are used such that deflections in excess of 10 percent of the support span occur, the maximum stress for a simple beam can be reasonably approximated with the following equation (Note 12):

$$S = (3PL/2bd^2) \cdot [1 + 6(D/L)^2 - 4(d/L)(D/L)] \tag{3a}$$

where S, P, L, b, and d are the same as for Eq 3 and D is the deflection in m (in.) of the centerline of the specimen at the middle of the support span.

NOTE 12—When large support span-to-depth ratios are used, significant end forces are developed at the supports which affect the moment in a simply supported beam. An approximate correction factor is given in Eq 3a to correct for these end forces in large support span-to-depth ratio beams where relatively large deflections exist.

10.3 *Maximum Fiber Stress, Method II*—When a beam is loaded in flexure at two central points and supported at two outer points, the maximum stress in the outer fibers occurs between the two central loading points that define the load span (Fig. 2). This stress may be calculated for any point on the load-deflection curve for relatively small deflections by the following equation (Note 13):

$$S = PL/bd^2 \tag{3b}$$

where:

S = stress in the outer fiber throughout load span, N/m², (psi),
P = load at a given point on the load deflection curve, N (lbf),
L = support span, m (in.),

b = width of beam, m (in.), and
d = depth of beam, m (in.).

NOTE 13 The limitations defined for Eq 3 in Notes 10 and 11 apply also to Eq 3a, 3b, and 3c.

10.4 *Maximum Fiber Stress—Method II for Beams Tested at Large Support Spans*—If support span-to-depth ratios greater than 16 to 1 are used, such that deflections in excess of 10 percent of the support span occur, the maximum stress may be reasonably approximated with the following formula:

$$S = (PL/bd^2) \cdot [1 + (4.70D^2/L^2) - (7.04Dd/L^2)] \qquad (3c)$$

where S, P, L, b, and d are the same as for Eq 3b and D = maximum deflection of the center of the beam in m (in.).

10.5 *Flexural Strength (Modulus of Rupture)*—The flexural strength is equal to the maximum stress in the outer fibers at the moment of break. It is calculated in accordance with Eq 3, 3a, 3b, and 3c by letting P equal the load at the moment of break. If the material does not break, this part of the test is not applicable. In this case, it is suggested that yield strength, if applicable, be calculated and that the corresponding strain be reported also (see 10.6, 10.8, and 10.9).

10.6 *Flexural Yield Strength*—Some materials that do not break at outer fiber strains up to 5 percent may give load-deflection curves that show a point, Y, at which the load does not increase with an increase in deflection. In such cases, the flexural yield strength may be calculated in accordance with Eq 3, 3a, 3b, or 3c by letting P equal the load at point Y.

10.7 *Flexural Offset Yield Strength*—Offset yield strength is the stress at which the stress-strain curve deviates by a given strain (offset) from the tangent to the initial straight line portion of the stress-strain curve. The value of the offset must be given whenever this property is calculated.

NOTE 14 This value may differ from flexural yield strength defined in 10.6. Both methods of calculation are described in the Appendix to Method D 638.

10.8 *Stress at a Given Strain*—The maximum fiber stress at any given strain may be calculated in accordance with Eq 3, 3a, 3b or 3c by letting P equal the load read from the load-deflection curve at the deflection corresponding to the desired strain.

10.9 *Maximum Strain, Method I*—The maximum strain in the outer fibers also occurs at midspan, and may be calculated as follows:

$$r = 6Dd/L^2 \qquad (4)$$

where:
r = maximum strain in the outer fibers, mm/mm (in./in.),
D = maximum deflection of the center of the beam, mm (in.),
L = support span, mm (in.), and
d = depth, mm (in.).

10.10 *Maximum Strain, Method II*—The maximum strain in the outer fibers also occur at midspan, and may be calculated as follows:

$$r = 4.70Dd/L^2 \qquad (4a)$$

where D, d, L, and r are the same as for Eq 2a.

10.11 *Modulus of Elasticity:*

10.11.1 *Tangent Modulus of Elasticity, Method I*—The tangent modulus of elasticity, often called the "modulus of elasticity," is the ratio, within the elastic limit of stress to corresponding strain and shall be expressed in newtons per square meter (pounds per square inch). It is calculated by drawing a tangent to the steepest initial straight-line portion of the load-deflection curve and using Eq 5.

$$E_B = L^3m/4bd^3 \qquad (5)$$

where:
E_B = modulus of elasticity in bending, N/m² (psi),
L = support span, m (in.),
b = width of beam tested, m (in.),
d = depth of beam tested, m (in.), and
m = slope of the tangent to the initial straight-line portion of the load-deflection curve, N/m (lbf/in.) of deflection.

10.11.2 *Tangent Modulus of Elasticity, Method II*—The tangent modulus of elasticity is the ratio, within the elastic limit, of stress to corresponding strain and shall be expressed in newtons per square meter (pounds per square inch). It is calculated by drawing a tangent to the steepest initial straight-line portion of the load-deflection curve and using Eq 5a.

$$E_B = 0.21L^3m/bd^3 \qquad (5a)$$

where E_B, m, L, b, and d are the same as for Eq 5.

10.11.3 *Secant Modulus of Elasticity*—The secant modulus of elasticity is the ratio of stress to corresponding strain at any given point on the stress-strain curve, or the slope of the straight line that joins the origin and a selected point on the actual stress-strain curve. It shall be expressed in newtons per square meter (pounds per square inch). The selected point is generally chosen at a specified stress or strain. It is calculated in accordance with Eq 5 or 5a by letting m equal the slope of the secant to the load-deflection curve.

10.12 *Arithmetic Mean*—For each series of tests, the arithmetic mean of all values obtained shall be calculated to three significant figures and reported as the "average value" for the particular property in question.

10.13 *Standard Deviation*—The standard deviation (estimated) shall be calculated as follows and reported to two significant figures:

$$s = \sqrt{\frac{\Sigma X^2 - n\bar{X}^2}{n - 1}}$$

where:

s = estimated standard deviation,
X = value of single observation,
n = number of observations, and
$\bar{X}$ = arithmetic mean of the set of observations.

11. Report

11.1 The report shall include the following:

11.1.1 Complete identification of the material tested, including type, source, manufacturer's code number, form, principal dimensions, and previous history.

11.1.2 Direction of cutting and loading specimens.

11.1.3 Conditioning procedure.

11.1.4 Depth and width of specimen.

11.1.5 Method used.

11.1.6 Procedure used.

11.1.7 Support span length.

11.1.8 Support span-to-depth ratio.

11.1.9 Radius of supports and loading noses.

11.1.10 Rate of crosshead motion.

11.1.11 Maximum strain in the outer fibers of the specimen.

11.1.12 Flexural strength (if applicable), average value, and standard deviation.

11.1.13 Tangent or secant modulus of elasticity in bending, average value, and standard deviation.

11.1.14 Flexural yield strength (if desired), average value, and standard deviation.

11.1.15 Flexural offset yield strength (if desired), with offset or strain used, average value, and standard deviation.

11.1.16 Stress at any given strain up to and including 5 percent (if desired), with strain used, average value, and standard deviation.

12. Precision

12.1 Reproducibility between specimens is approximately ±5 percent for homogeneous materials tested.

12.2 Round-robin test data on flexural method comparisons are on file at ASTM Headquarters as RR 67:D-20.

TABLE 1 **Recommended Dimensions for Test Specimens of Sections 5.3 and 5.5 for Various Support Span-to-Depth Ratios (See Note 7)**

Method I (3-Point Loading)

Nominal Specimen Depth, mm (in.)	Specimen Width, mm (in.)	Support Span-to-Depth Ratio (See Note 7)								
		L/d = 16 to 1			L/d = 32 to 1			L/d = 40 to 1		
		Specimen Length, mm (in.)	Support Span, mm (in.)	Rate of Cross-head Motion (Procedure A), mm (in.)/min[a]	Specimen Length, mm (in.)	Support Span, mm (in.)	Rate of Cross-head Motion (Procedure A), mm (in.)/min[a]	Specimen Length, mm (in.)	Support Span, mm (in.)	Rate of Cross-head Motion (Procedure A), mm (in.)/min[a]
0.8 (1/32)	25 (1)	50 (2)	16 (5/8)[b]	0.5 (0.02)	50 (2)	25 (1)	1.3 (0.05)	60 (2 1/4)	30 (1 1/4)	2.0 (0.08)
1.6 (1/16)	25 (1)	50 (2)	25 (1)	0.8 (0.03)	80 (3)	50 (2)	2.8 (0.11)	90 (3 1/2)	60 (2 1/2)	4.3 (0.17)
2.4 (3/32)	25 (1)	60 (2 1/2)	40 (1 1/2)	1.0 (0.04)	100 (4)	80 (3)	4.1 (0.16)	120 (4 3/4)	95 (3 3/4)	6.4 (0.25)
3.2 (1/8)	25 (1)	80 (3)	50 (2)	1.3 (0.05)	130 (5)	100 (4)	5.3 (0.21)	180 (7)	130 (5)	8.4 (0.33)
4.8 (3/16)	13 (1/2)	100 (4)	80 (3)	2.0 (0.08)	191 (7 1/2)	150 (6)	8.1 (0.32)	240 (9 1/2)	191 (7 1/2)	12.7 (0.50)
6.4 (1/4)	13 (1/2)	130 (5)	100 (4)	2.8 (0.11)	250 (10)	200 (8)	10.9 (0.43)	330 (13)	250 (10)	17.0 (0.67)
9.6 (3/8)	13 (1/2)	191 (7 1/2)	150 (6)	4.1 (0.16)	380 (15)	300 (12)	16.3 (0.64)	480 (19)	380 (15)	25.4 (1.00)
12.7 (1/2)	13 (1/2)	250 (10)	200 (8)	5.3 (0.21)	495 (19 1/2)	410 (16)	21.6 (0.85)	640 (25)	510 (20)	34.0 (1.34)
19.1 (3/4)	19 (3/4)	380 (15)	300 (12)	8.1 (0.32)	740 (29)	610 (24)	32.5 (1.28)	940 (37)	760 (30)	50.8 (2.00)
25.4 (1)	25 (1)	495 (19 1/2)	410 (16)	10.9 (0.43)	990 (39)	810 (32)	43.4 (1.71)	1240 (49)	1020 (40)	67.8 (2.67)

[a] Rates indicated are for Procedure A where strain rate is 0.01 mm/mm/min (0.01 in./in./min). To obtain speeds for Procedure B where strain rate is 0.10 mm/mm/min (0.10 in./in./min), multiply these values by 10. Procedure A is to be used for all specification purposes unless otherwise stated in the specifications. See 8.1.3 for the method of calculation.

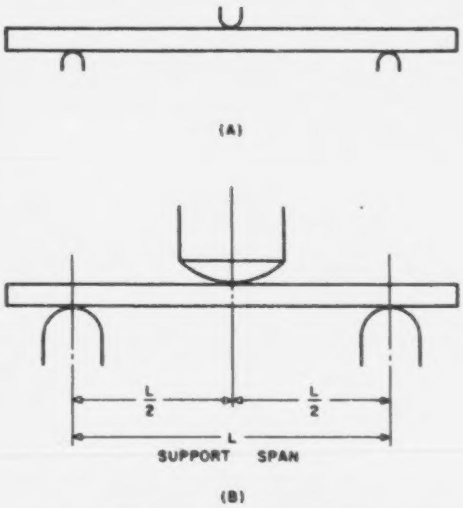
[b] This support span-to-depth ratio is greater than 16 to 1 in order to give clearance between moving head and specimen support.

TABLE 2 Recommended Dimensions for Test Specimens of Section 5.3 and 5.5 for Various Support Span-to-Depth Ratios (See Note 7)

Method II (4-Point Loading)

Nominal Specimen Depth, mm (in.)	Specimen Width, mm (in.)	Specimen Length, mm (in.)	Support Span, mm (in.)	Load Span, mm (in.)	Rate of Cross-head Motion (Procedure A) mm (in.)/min[a]
L/d = 16 to 1					
1.6 (1/16)	25 (1)	51 (2)	25 (1)	8.4 (0.33)	0.8 (0.03)
2.4 (3/32)	25 (1)	64 (2 1/2)	38 (1 1/2)	12.7 (0.50)	1.3 (0.05)
3.2 (1/8)	25 (1)	76 (3)	51 (2)	17.0 (0.67)	1.7 (0.07)
4.8 (3/16)	13 (1/2)	102 (4)	76 (3)	25.4 (1.00)	2.5 (0.10)
6.4 (1/4)	13 (1/2)	127 (5)	102 (4)	33.8 (1.33)	3.4 (0.13)
9.6 (3/8)	13 (1/2)	190 (7 1/2)	152 (6)	50.8 (2.00)	5.1 (0.20)
12.7 (1/2)	13 (1/2)	254 (10)	203 (8)	67.8 (2.67)	6.8 (0.27)
19.1 (3/4)	19 (3/4)	381 (15)	305 (12)	102 (4.00)	10.2 (0.40)
25.4 (1)	25 (1)	495 (19 1/2)	406 (16)	135 (5.33)	13.6 (0.54)
L/d = 32 to 1					
1.6 (1/16)	25 (1)	76 (3)	51 (2)	17.0 (0.67)	3.4 (0.13)
2.4 (3/32)	25 (1)	102 (4)	76 (3)	25.4 (1.00)	5.1 (0.20)
3.2 (1/8)	25 (1)	127 (5)	102 (4)	33.8 (1.33)	6.8 (0.27)
4.8 (3/16)	13 (1/2)	190 (7 1/2)	165 (6 1/2)	55.1 (2.17)	11.9 (0.47)
6.4 (1/4)	13 (1/2)	254 (10)	203 (8)	67.8 (2.67)	13.5 (0.54)
9.6 (3/8)	13 (1/2)	381 (15)	305 (12)	102 (4)	20.3 (0.81)
12.7 (1/2)	13 (1/2)	495 (19 1/2)	406 (16)	135 (5.3)	27.3 (1.08)
19.1 (3/4)	19 (3/4)	737 (29)	610 (24)	204 (8.0)	40.9 (1.61)
25.4 (1)	25 (1)	991 (39)	813 (32)	271 (10.7)	54.6 (2.15)
L/d = 40 to 1					
1.6 (1/16)	25 (1)	89 (3 1/2)	63 (2 1/2)	21.2 (0.83)	5.2 (0.21)
2.4 (3/32)	25 (1)	121 (4 3/4)	95 (3 3/4)	31.8 (1.25)	7.9 (0.31)
3.2 (1/8)	25 (1)	178 (7)	127 (5)	42.4 (1.67)	10.6 (0.42)
4.8 (3/16)	13 (1/2)	241 (9 1/2)	190 (7 1/2)	63.5 (2.50)	15.8 (0.63)
6.4 (1/4)	13 (1/2)	330 (13)	254 (10)	84.6 (3.33)	21.2 (0.84)
9.6 (3/8)	13 (1/2)	483 (19)	381 (15)	127 (5.0)	31.8 (1.26)
12.7 (1/2)	13 (1/2)	635 (25)	508 (20)	169 (6.7)	42.7 (1.68)
19.1 (3/4)	19 (3/4)	940 (37)	762 (30)	254 (10.0)	63.8 (2.52)
25.4 (1)	25 (1)	1245 (49)	1016 (40)	338 (13.3)	85.3 (3.36)

[a] Rates indicated are for Procedure A where strain rate is 0.01 mm/mm · min (0.01 in./in. · min). To obtain speeds for Procedure B where strain rate is 0.10 mm/mm · min (0.10 in./in. · min), multiply these values by 10. Procedure A is to be used for all specification purposes, unless otherwise stated in the specifications. See 8.2.3 for the method of calculation.



NOTE (*a*) Minimum radius = 3.2 mm (⅛ in.). (*b*) Maximum radius supports = 1.5 times specimen depth, maximum radius loading nose = 4 times specimen depth.

FIG. 1 Allowable Range of Loading Nose and Support Radii for Specimen 6.4 mm (0.25 in.) Thick.

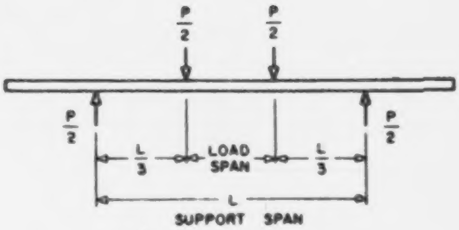
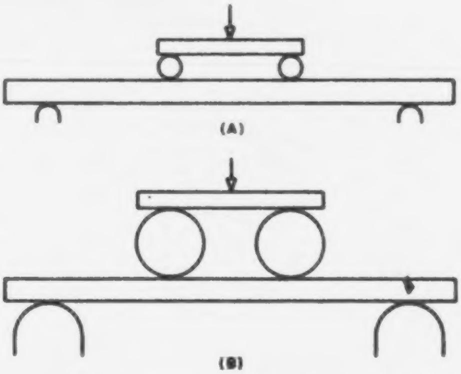


FIG. 2 Loading Diagram.



NOTE (*a*) Minimum radius = 3.2 mm (⅛ in.). (*b*) Maximum radius = 1.5 times specimen depth.

FIG. 3 Allowable Range of Loading and Support Noses Radii for Specimen 6.4 mm (0.25 in.) Thick.

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This standard is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn. Your comments are invited either for revision of this standard or for additional standards and should be addressed to ASTM Headquarters. Your comments will receive careful consideration at a meeting of the responsible technical committee, which you may attend. If you feel that your comments have not received a fair hearing you should make your views known to the ASTM Committee on Standards, 1916 Race St., Philadelphia, Pa 19103, which will schedule a further hearing regarding your comments. Failing satisfaction there, you may appeal to the ASTM Board of Directors.

Exhibit C

American Society for Testing and Materials (ASTM) Definitions of the Rigidity of Plastic Materials

Designation: D 883 – 83

Standard Definitions of Terms Relating to PLASTICS[1]

This standard is issued under the fixed designation D 883; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last approval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

These definitions have been approved for use by agencies of the Department of Defense and for listing in the DoD Index of Specifications and Standards.

1. Scope

1.1 This standard is a compilation of definitions of technical terms used in the plastics industry. Terms that are generally understood or adequately defined in other readily available sources are not included.

1.2 When a term is used in an ASTM document for which Committee D-20 is responsible it is included only when judged, after review, by Subcommittee D 20.92 to be a generally usable term.

1.3 Definitions that are identical to those published by another standards body are identified with the abbreviation of the name of the organization; for example, IUPAC is the International Union of Pure and Applied Chemistry.

1.4 A definition is a single sentence with additional information included in notes. It is reviewed every 5 years; the year of last review is appended.

1.5 For literature related to plastics terminology, see the Reference section at the end of this standard.

rigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension greater than 700 MPa (100 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Methods D 790, Test for Flexural Properties of Plastics and Electrical Insulating Materials,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

semirigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension of between 70 and 700 MPa (10 000 and 100 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Method D 790, Test for Flexural Properties of Plastics and Electrical Insulating Materials,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

nonrigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension of not over 70 MPa (10 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 790, Test for Flexural Properties of Plastics,[4] ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

STATEMENT OF A. J. SPILNER, MANAGER, TRADE ISSUES, GOVERNMENT RELATIONS, ROHM & HAAS CO.

SUMMARY

Rohm and Haas Company is one of five major U.S. producers of acrylic sheet. There are at least ten other U.S. producers. The Company manufactures acrylic sheet in plants in Knoxville, Tennessee; Louisville, Kentucky; Bristol, Pennsylvania and Kensington, Connecticut. The Company's product is sold in the United States under the trademark PLEXIGLAS.

At least twenty firms imported acrylic sheet into the U.S. in 1982 and 1983 from at least thirteen foreign countries.

The Problem—Misclassification

Imports of acrylic sheet are currently classified under two separate provisions of the Tariff Schedules. The distinction between the two classifications is based on whether the sheets are considered "flexible" within a dictionary definition of "flexible".

Several problems have been created by this bifurcation:

Since 1969, imports of acrylic sheet considered to be "flexible" have been assessed a lower duty than other acrylic sheet. The lower duty rate imports account for more than 75% of total imports of acrylic sheet.

Imports of acrylic sheet considered to be "flexible" have been classified in a basket classification which includes other types of plastic sheet as well as acrylic.

If imports of "flexible" acrylic sheet had been classified as a separate item instead of being grouped with other products in a basket classification, or if imports of "flexible" acrylic sheet and other acrylic sheet had been consolidated under one item limited to acrylic sheet, imports of "flexible" acrylic sheet from Taiwan would have exceeded the competitive need limit under the GSP in several recent years and would have had duty-free treatment automatically withdrawn as a result of the annual review process of the Office of the United States Trade Representative. As it is, imports of "flexible" acrylic sheet continue to enter the U.S. free of duty.

Imports of other types of acrylic sheet from Taiwan exceeded the competitive need limit under the GSP in 1979, 1981, 1982 and 1983 and, as a result, no longer receive duty-free treatment.

Furthermore, imports of acrylic sheet from Taiwan are the subject of an ongoing anti-dumping investigation (731-TA-139). The Department of Commerce has made a final determination that imports of acrylic sheet from Taiwan are being sold at less than fair value. The International Trade Commission (ITC) has made a preliminary determination that there is a reasonable indication that the acrylic sheet industry in the United States is being materially injured or is threatened with material injury by reason of the importation of acrylic sheet from Taiwan. The ITC's final determination will be announced in May 1984.

Historical Perspective

The distinction between plastic sheets as "flexible" or "other" (non-flexible) did not appear in the article provisions of the Tariff Act of 1930, as amended, the controlling statute prior to the adoption of the present Tariff Schedules effective August 31, 1963. While "flexible" plastic sheets were classified separately beginning at that time, the record shows that Congress did not intend any form of acrylic plastic sheet to be considered "flexible."

Customs began classifying acrylic sheets in thicknesses up to 0.250" (thin sheet) as "flexible" in the 1970's. Administrative and judicial challenges to Customs classification of this acrylic sheet as "flexible" have not been successful.

Recommendation

Having exhausted administrative and judicial remedies, we now request that the Tariff Schedules provide for a definition of the term "flexible", for purposes of the classification of plastic film, strips, and sheets of acrylic under items 771.41 and 771.43. The effect of this proposal will be to cause all thickness of acrylic sheet currently being imported to be classified under one item, 771.45, rather than thicknesses up to 0.250" being classified under item 771.41, and thicknesses over 0.250" being classified under item 771.45, as at present.

The proposed change would eliminate unwarranted administrative burdens, provide uniform treatment in the tariff classification of acrylic sheet and restore to the

Tariff Schedules the duty treatment intended by the Congress to be applicable to sheets of acrylic resins.

ROHM AND HAAS COMPANY'S COMMENTS ON
HR 5337

- A bill to amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips and sheets of acrylic plastic materials.

NEED TO AMEND TARIFF SCHEDULES OF THE UNITED STATES

At the present time, acrylic film, strips and sheets are subject to tariff classification under two separate provisions of subpart B of part 12 of schedule 7 of the Tariff Schedules of the United States depending upon whether, on the basis of a very subjective determination, such articles are or are not considered "flexible".

For example, acrylic sheets in thicknesses up to and including 0.250 inch are considered by U. S. Customs to be flexible and are classified under item 771.41, TSUS, while acrylic sheets in thicknesses over 0.250 inch are considered to be rigid (not flexible) and are classified under item 771.45 (Exhibit A.).

The domestic producers of acrylic sheet have expressed dissatisfaction with the criterion presently used to establish whether an article is or is not flexible. Quite remarkably, the "test" currently used is one of bendability. If the edges of a sample can be bent so they touch, the article is considered to be flexible. One such producer the Rohm and Haas Company of Philadelphia, Pennsylvania, initiated an American manufacturer's petition to challenge the administrative practice, fostered by a 1969 decision of the Customs Court, of resort to the presumption that the term "flexible" is to be used and interpreted by its common meaning.

The common meaning of the term "flexible" was found by the Customs court to be stated definitively in Webster's Third New International Dictionary of the English Language, Unabridged (1961) as:

> 1. Capable of being flexed: capable of being turned, bowed, or twisted without breaking... syn. Elastic, resilient, springy, supple: Flexible is applicable to anything capable of being bent, turned or twisted without being broken and with or without returning of itself to it's former shape.

Since rigid articles such as glass and steel are "capable of being flexed," the common meaning is obviously too broad. Furthermore, if bendability were to be the criterion, differing test results would occur depending on (i) the size or the length of the sample, (ii) the size and the weight of the individual performing the test and (iii) the use of mechanical aids such as banding or strapping machines.

In the Tariff Classification Study, Explanatory and Background Materials, Schedule 7 (1960) (the "Study")* there appear to be numerous references that establish conclusively how the Congress originally intended acrylic sheet should be classified. Prior to the adoption of the Tariff Schedules, acrylic sheet was dutiable at 21 cents or 50 cents per lb. under Paragraph 31(a)(1) of the Tariff Act of 1930, as amended. In the explanatory notes to the Study at page XI is noted:

> For each part of the revised Tariff Schedules there is shown the provisions of the Tariff Act of 1930, as amended and modified, and related provisions of law incorporated in that part. A cross-reference (col. 1) identifies the revised tariff item.

At page 455 of the Study, it may be noted that revised tariff item 771.45, and not items 771.40 or 771.42, Tariff Schedules of the United States ("TSUS") cross refers to Paragraph 31(a)(1). Viewed from the perspective of the revised tariff items, at page 430 it may be noted that Paragraph 31(a)(1) is again cross

* Photocopies of the relevant pages of the Study (emphasis added) are attached (Exhibit B)

referred, and the only such reference, to the then-proposed item 771.45, TSUS. The rate of duty under Paragraph 31(a)(1) of the Tariff Act of 1930 and item 771.45 of the proposed Tariff Schedules was identical.

As noted on page XI of the Study:

> Section 101(b) of the Customs Simplification Act specifies that the Commission should seek to accomplish the revision and consolidation of the Customs laws without suggesting changes in any rate of duty. Where, however, in the judgment of the Commission, the purpose of the act cannot be accomplished without rate changes, the Commission is required in its report to specify the incidental change in rate and submit a summary of the data on which such rate change was based, together with a statement of the probable effect of such change on any industry in the United States. The explanatory notes covering each part of the revised Tariff Schedules indicate rate changes and set forth the data required by law.
>
> (emphasis added)

The Study is silent on any change of duty rate with respect to the eo nomine classification of articles of acrylic resin under item 771.45, TSUS. There was none; the rates were identical.

It is clear, therefore, the Study details where the Congress intended articles previously subject to classification under Paragraph 31(a)(1) of the Tariff Act of 1930 were to be classified under the revised Tariff Schedules.

Subsequent to 1969, acrylic sheet up to 0.250 inch in thickness began to be classified other than under item 771.45, TSUS. This ultimately led to challenge by the domestic industry which sought both judicial and legislative relief. We note, for example, that the then-Acting Commissioner of Customs, Mr. G. R. Dickerson, stated in a letter dated July 13, 1977 to Charles A. Vanik, the then-Chairman of the Subcommittee on Trade:

> The Court's test is exceptionally broad and has caused some administrative difficulty. Furthermore, it appears that as a result of the Court's decision some merchandise is being treated as flexible for tariff purposes which would not have been so regarded by the framers of the Tariff Schedules.
>
> A quantitative test, based on the modulus of elasticity in flexure would be easier to

> administer and lead to more consistent results.

Comments on miscellaneous tariff bills then pending before the Congress, including a measure that would have restored the proper tariff classification to acrylic sheet, were furnished by other interested agencies as well. On this issue, the Department of Commerce observed:

> It appears that a major purpose of the proposed legislation is to correct alleged improper classification by the U. S. Customs Service. In this regard, we observe that in testimony before the Subcommittee on Trade, the spokesman for the Rohm and Haas Company sought support for H.R. 5285 on the grounds that, for purposes of duty assessment, the U.S. Customs Service is not classifying imports of certain acrylic sheets under the appropriate TSUS item, thus permitting such imports to enter at a lower rate of duty than was intended by the Congress.
>
> If this situation is occurring, we believe that an adequate remedy already exists under section 516 of the Tariff Act of 1930 whereby domestic manufacturers may protest a Customs Service classification ruling and pursue the matter through the Customs Courts, if

> necessary. It is our understanding that in this case the industry has not filed a protest with the Customs Service under this statutory provision. Inasmuch as existing administrative procedures have not yet been exhausted, the Department does not consider the proposed legislation to be warranted.
>
> Legislative Proposals on Miscellaneous Tariff and Trade Bills: Hearings Before the Subcommittee on Trade of the House Committee on Ways and Means, Serial 95-38. 95th Cong., 1st Sess. 741 (1977)

The Congress did not act and the Rohm and Haas Company pursued relief through the courts. On February 9, 1984, the Court of Appeals for the Federal Circuit affirmed the 1969 administrative practice of use of the dictionary sense of the term "flexible". Almost ironically, the Court reached this decision by noting in its closing paragraph:

> Congress, however, made no change in these items, although it did change other parts of the tariff schedules. This failure to take any action in response to the government's suggestion that a change from the dictionary meaning in (the 1969

case) would be appropriate, at least suggests that the Congress acquiesced in the (1969) interpretation of the term "flexible".

Rohm and Haas Co. v. United
States, Appeal No. 83-1177

In order to eliminate unwarranted administrative burdens, provide uniform treatment in the tariff classification of acrylic sheet products and restore to the Tariff Schedules the duty treatment intended by the Congress to be applicable to sheets of acrylic resins, it is proposed to amend the headnotes to Subpart B, part 12, schedule 7 of the Tariff Schedules of the United States so as to provide for definition of the term "flexible" when applied to film, strips, and sheets of acrylic. By establishing a quantitative test predicated on modulus of elasticity, both the ambiguities and inconsistencies will be removed. More importantly, the tariff classification of acrylic sheet will be effected in accordance with the intent of the Congress at the time the Tariff Schedules were originally adopted. This will bring to the end a practice created, but not corrected, by the judiciary.

Rationale for the Proposed Definition of the Term "Flexible"

In its decision, the Court of International Trade held that Customs properly classified acrylic sheet 0.250" inch and less in thickness as flexible plastic sheet under item 771.41 on the basis that the term "flexible" had not been established as a commercial designation which is general (extending over the entire country), definite (certain of understanding), and uniform (the same everywhere in the country) within the plastics industry, or to demonstrate that Congress had a manifest intention to define the word "flexible" in a commercially designated way which differs from that term's common meaning.

Our comments on Congressional intent are given above. On the issue of the term "flexible", although a standard definition of the term "flexible" has not been adopted by the plastics industry, the terms "rigid plastic", "semi-rigid plastic" and "non-rigid plastic" have been defined and adopted by the plastics industry as noted in American Society for Testing and Materials (ASTM) Designation D-883-83 "Standard Definitions of Terms Relating to Plastics". (See Exhibit C). In most instances, "non-rigid" is synonymous with "flexible".

For the purposes of the bill, we propose that, in effect, "flexible" acrylic plastic film, strips and sheets be considered neither as "rigid plastics" nor as "semi-rigid plastics", rather as "non-rigid-plastics" as defined in ASTM D-883-83. The language of the bill thus states that the term "flexible" means acrylic plastic film, strips and sheets which have a modulus of elasticity either in flexure or in tension less than 10,000 psi at 23^{0}C and 50% relative humidity, when tested in accordance with the American Society for Testing and Materials (ASTM) Method D-638, D-747, D-790 or D-882.

Effect of the Bill on the Tariff Classification of Acrylic Sheet

The effect of the proposed bill would be to classify essentially all thicknesses of acrylic sheet currently being imported under item 771.45, rather than thicknesses 0.250 inch and less being classified under item 771.41, and thicknesses over 0.250 inch being classified under 771.45, as at present.

Revenue Impact of Proposed Bill

There would be some increase in duties paid. The amount is uncertain.

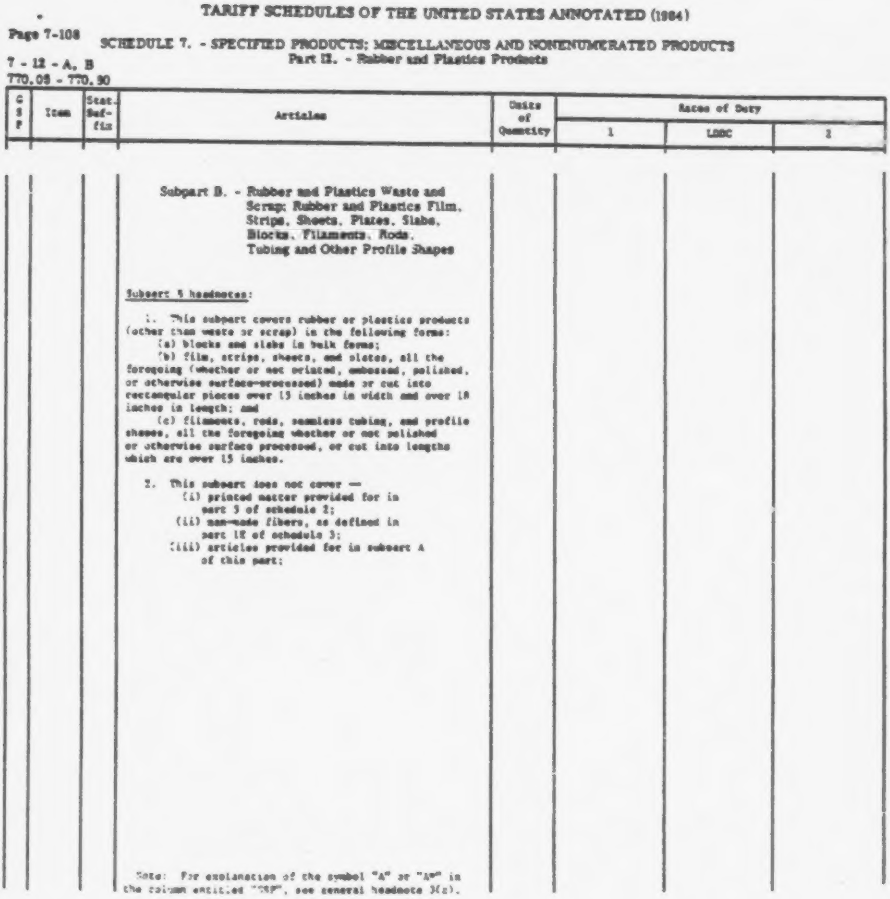
The duty rate on acrylic sheet in thicknesses up to and including 0.250 inch would be increased slightly from 6% ad valorem under item 771.41 to 8.5 cents per pound under item 771.45. At the current average f.a.s. selling price of approximately $1.00 per pound for imported acrylic sheet, the increase in duty payable would be approximately 2.5 cents per pound.

The duty rate on acrylic sheet in thicknesses over 0.250 inch would not be affected since the tariff classification in these thicknesses would not change.

Exhibit A

Present Tariff Classifications and Duty Rates:

Product	TSUSA	Duty Rate
Acrylic sheet .250" and less in thickness	item 771.41	6 % ad valorem
Acrylic sheet over .250" in thickness	item 771.45	8.5¢ /lb.



TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1984)

Page 7-108

SCHEDULE 7. - SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS
Part 12. - Rubber and Plastics Products

7 - 12 - A, B
770.05 - 770.90

G S P	Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty		
					1	LDDC	2
			Subpart B. - Rubber and Plastics Waste and Scrap; Rubber and Plastics Film, Strips, Sheets, Plates, Slabs, Blocks, Filaments, Rods, Tubing and Other Profile Shapes				

Subpart B headnotes:

1. This subpart covers rubber or plastics products (other than waste or scrap) in the following forms:
   (a) blocks and slabs in bulk forms;
   (b) film, strips, sheets, and plates, all the foregoing (whether or not printed, embossed, polished, or otherwise surface-processed) made or cut into rectangular pieces over 15 inches in width and over 18 inches in length; and
   (c) filaments, rods, seamless tubing, and profile shapes, all the foregoing whether or not polished or otherwise surface processed, or cut into lengths which are over 15 inches.

2. This subpart does not cover —
   (i) printed matter provided for in part 3 of schedule 2;
   (ii) man-made fibers, as defined in part 1E of schedule 3;
   (iii) articles provided for in subpart A of this part;

Note: For explanation of the symbol "A" or "A*" in the column entitled "GSP", see general headnote 3(c).

(iv) film, strips, sheets, and plates, which —
  (A) have been made or cut into non-rectangular shapes of any size, or
  (B) measure not over 15 inches in width, or
  (C) measure not over 18 inches in length, or
  (D) have been ground on the edges, drilled, milled, hemmed, or otherwise usefully processed (except surface-processed); or
(v) filaments, rods, seamless tubing, and profile shapes, which have been made or cut into lengths measuring not over 15 inches, or which have been ground on the ends, drilled, milled, or otherwise processed (except surface-processed).

The products described in (iv) and (v) are classifiable as articles in subpart C of this part or under descriptions elsewhere in the schedules.

3. The provisions in this subpart applicable to waste and scrap of rubber or plastics do not apply to waste and rags of man-made fibers (see schedule 3) or to any waste or scrap which has been cleaned, ground, melted, made into pellets, or otherwise processed.

GSP	Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty 1	Rates of Duty LDDC	Rates of Duty 2
			Waste and scrap, of rubber or plastics, fit only for remanufacture:				
A	771.05	00	Cellulose acetate	Lb.	2.3c per lb.	1.5c per lb.	50c per lb.
	771.10	00	Rubber	Lb.	Free		Free
	771.15	00	Other	Lb.	Free		10% ad val.
			Film, strips, sheets, plates, slabs, blocks, filaments, rods, seamless tubing, and other profile shapes, all the foregoing wholly or almost wholly of rubber or plastics:				
			Of cellulosic plastics materials:				
A	771.20		Of cellulose acetate		3.1% ad val.	2.9% ad val.	30.5% ad val.
		10	Film, strips, and sheets	Lb.			
		30	Other	Lb.			
A	771.25	00	Of vulcanized fiber	Lb.	3.4% ad val.	3.1% ad val.	30% ad val.
			Other:				
			Film, strips, and sheets:				
A	771.30	00	Not over 0.003 inch in thickness	Lb.	8% ad val.	5.2% ad val.	65% ad val.
A	771.31	00	Over 0.003 inch in thickness	Lb.	4.2% ad val.	3.7% ad val.	28.5% ad val.
A	771.35	00	Other	Lb.	4.1% ad val.		18% ad val.

Note: For explanation of the symbol "A" or "A*" in the column entitled "GSP", see general headnote 3(c).

GSP	Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty 1	Rates of Duty LDDC	Rates of Duty 2
			Film, strips, sheets, plates, slabs, blocks, filaments, rods, seamless tubing, and other profile shapes, all the foregoing wholly or almost wholly of rubber or plastics (con.):				
			Not of cellulosic plastics materials:				
			Film, strips, and sheets, all the foregoing which are flexible:				
A	771.40	00	Made in imitation of patent leather......	Sq. yd..	3.4% ad val.	3.1% ad val.	25% ad val.
			Other:				
A	771.41	00	Of materials other than polyester, polyvinyl chloride, polyethylene, or polypropylene, over 0.006 inch in thickness, and not in rolls......	Lb......	6% ad val.		25% ad val.
A*	771.43		Other..................................	....	4.9% ad val.	4.2% ad val.	25% ad val.
		10	Of polyester....................	Lb.			
		12	Of polyvinyl chloride..........	Lb.			
		14	Of polyethylene................	Lb.			
		16	Of polypropylene...............	Lb.			
			Other:				
		30	Not over 0.009 inch in thickness...................	Sq. yd.			
		34	Over 0.009 inch in thickness...................	Sq. yd.			
			Other:				
A*	771.45	00	Of acrylic resin..........................	Lb......	8.5¢ per lb.		30¢ per lb.
A	771.50	00	Of casein.................................	Lb......	3% ad val.	2.7% ad val.	17% ad val.
A	771.55	00	Other.....................................	Lb......	7.[illegible]% ad val.	5.8% ad val.	35% ad val.

Subpart C. - Specified Rubber and Plastics Products

Subpart C headnote:

1. For the purposes of this subpart, cord, fabric, wire, or non-rubber or non-plastic reinforcing or traction-increasing media shall be disregarded in determining the component material of chief value in tires, or in tubes for tires (items 772.45 through 772.60, inclusive).

Subpart C statistical headnote:

1. For the purposes of item 772.51, rim size is the inner diameter of the tire measured bead to bead.

Note: For explanation of the symbol "A" or "A*" in the column entitled "GSP", see general headnote 3(c).

EXHIBIT B

UNITED STATES TARIFF COMMISSION

TARIFF CLASSIFICATION STUDY

EXPLANATORY AND BACKGROUND MATERIALS

Schedule 7.—Specified products; miscellaneous and nonenumerated products

Report to the President and to the Chairmen of the
Committee on Ways and Means of the House
and the Committee on Finance of the Senate
Pursuant to Title I of the Customs
Simplification Act of 1954

November 15, 1960

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1960

Explanatory notes

Section 101(b) of the Customs Simplification Act specifies that the Commission should seek to accomplish the revision and consolidation of the customs laws without suggesting changes in any rate of duty. Where, however, in the judgment of the Commission, the purpose of the act cannot be accomplished without rate changes, the Commission is required in its report to specify the incidental change in rate and submit a summary of the data on which such rate change was based, together with a statement of the probable effect of such change on any industry in the United States. The explanatory notes covering each part of the revised tariff schedules indicate rate changes and set forth the data required by law.

Statutory, trade agreement, and related provisions in effect December 31, 1959 [1]

For each part of the revised tariff schedules there is shown the provisions of the Tariff Act of 1930, as amended and modified, and related provisions of law incorporated in that part. A cross reference (col. 1) identifies the revised tariff item. The word "none" or "dropped" in column 1 opposite a provision indicates the intent to repeal the provision.

The 1930 Tariff Act provisions are arranged in order by paragraph number and are followed by the related tariff provisions. The statutory description of articles, as amended through December 1959, is shown in column 3. Column 4 shows the subclassifications of statutory language required to reflect the rate of duty in effect December 31, 1959. The subclassifications result primarily from the granting of a traded agreement concession on only a part of a statutory description. However, a few tariff descriptions are subdivided so that they appear in more than one part of the revised tariff schedules which has required a subclassification in column 4; such subclassifications are preceded by an asterisk (*).

The "trade agreement rate" column shows all trade agreement obligations in effect December 31, 1959. The word "none" in this column indicates there is no trade agreement obligation, and the rate shown for such item in the "full rate" column applies. All products of Cuba subject to a preferential rate are set forth separately and the preferential rate is shown in the "trade agreement rate" column.

The full rate applies only to products of Communist-dominated countries or areas designated by the President pursuant to section 5 of the Trade Agreements Extension Act of 1951. Except for a very few, the rates shown in this column are those specified in the Tariff Act of 1930 or established pursuant to section 336 of the Tariff Act of 1930.

Appendix

Schedule 7 was published by the Commission for public hearing in four stages. Part 1 of the schedule was published on April 18, 1958, and hearings thereon were held beginning June 3, 1958; part 11 (originally issued as pt. 5) was published July 15, 1958, and hearings thereon were held beginning September 16, 1958; subparts A, B, C, D, and E of part 2 were published June 17, 1959, and hearings

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[1] Changes made between Dec. 31, 1959, and Aug. 1, 1960, are shown in footnotes.

SCHEDULE 7. - SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS
Part 12. - Rubber and Plastics Products

	Item	Articles	Rates of Duty	
			1	2
		Film, strips, sheets, plates, slabs, blocks, filaments, rods, seamless tubing, and other profile shapes, all the foregoing wholly or almost wholly of rubber or plastics:		
		Of cellulosic plastics materials:		
31(a)(1)	771.20	Of cellulose acetate........................	10.5¢ per lb.	50¢ per lb.
32	771.25	Of vulcanized fiber........................	8.5% ad val.	30% ad val.
		Other:		
31(b)(1), 31(c)	771.30	Film, strips, and sheets, all the foregoing not over 0.003 inch in thickness........................	22.5% ad val.	45% ad val.
31(b)(1)	771.35	Other........................	20¢ per lb.	45¢ per lb.
		Not of cellulosic plastics materials:		
		Film, strips, and sheets, all the foregoing which are flexible and unsupported:		
1530(b)(4)[1559]	771.40	Made in imitation of patent leather..	7.5% ad val.	25% ad val.
1530(c)(d)[1559], 1537(b)[1559], 1539(b)	771.42	Other........................	12.5% ad val.	25% ad val.
		Other:		
31(a)(1)[1559]	771.45	Of acrylic resin........................	21¢ per lb.	50¢ per lb.
33	771.50	Of casein........................	10.5¢ per lb.	25¢ per lb.
1558, 1559	771.55	Other........................	20% ad val.	35% ad val.

TARIFF CLASSIFICATION STUDY

Schedule 7, Part 12.--Rubber and Plastics Products

Statutory, Trade Agreement, and Related Provisions in Effect December 31, 1957

Revised Tariff Item	Tariff Act of 1930, as Amended and Modified, and Related Provisions of Law				
	Par.	Statutory Description of Articles	Subclassification of Articles Schedule A 1957 Commodity Nos.	Trade Agreement Rate	Full Rate
770.30 770.40	Ex. 28(a)	* * *; synthetic phenolic resin and all resin-like products * * * whether in a solid, semi-solid, or liquid condition; * * *.	8089 900 (part)	3-1/2¢ per lb. + 22-1/2% ad val.	7¢ per lb. + 45% ad val.
	(e)	The ad valorem rates provided in this paragraph shall be based upon the American selling price (as defined in subdivision (g) of section 402, Title IV), of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value, as defined in subdivision (e) of section 402, Title IV.			
770.30 770.45 770.47 770.50 770.52 770.55 770.57 770.60 771.05 771.20 771.30 771.35 771.45 772.03 772.06 772.09 772.15 772.20 772.25 772.80 772.85 772.97	Ex. 31(a)	Cellulose acetate, and compounds, combinations, or mixtures containing cellulose acetate: (1) In blocks, sheets, rods, tubes, * * *, and waste wholly or in chief value of cellulose acetate, all the foregoing not made into finished or partly finished articles, * * *;			
			Wholly or in chief value of acrylic resins (not including waste)........	8250 905 (part) 8250 505	21¢ per lb.	50¢ per lb.
			Other except textile fibers and textile wastes........................	8250 900 (part) 8250 505	10-1/2¢ per lb.	50¢ per lb.

Exhibit C

American Society for Testing and Materials (ASTM) Definitions of the Rigidity of Plastic Materials

Designation: D 883 – 83

Standard Definitions of Terms Relating to PLASTICS[1]

This standard is issued under the fixed designation D 883; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

These definitions have been approved for use by agencies of the Department of Defense and for listing in the DoD Index of Specifications and Standards.

1. Scope

1.1 This standard is a compilation of definitions of technical terms used in the plastics industry. Terms that are generally understood or adequately defined in other readily available sources are not included.

1.2 When a term is used in an ASTM document for which Committee D-20 is responsible it is included only when judged, after review, by Subcommittee D 20.92 to be a generally usable term.

1.3 Definitions that are identical to those published by another standards body are identified with the abbreviation of the name of the organization; for example, IUPAC is the International Union of Pure and Applied Chemistry.

1.4 A definition is a single sentence with additional information included in notes. It is reviewed every 5 years; the year of last review is appended.

1.5 For literature related to plastics terminology, see the Reference section at the end of this standard.

rigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension greater than 700 MPa (100 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Methods D 790, Test for Flexural Properties of Plastics and Electrical Insulating Materials,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

semirigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension of between 70 and 700 MPa (10 000 and 100 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Method D 790, Test for Flexural Properties of Plastics and Electrical Insulating Materials,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

nonrigid plastic, *n*—for purposes of general classification, a plastic that has a modulus of elasticity either in flexure or in tension of not over 70 MPa (10 000 psi) at 23°C and 50 % relative humidity when tested in accordance with ASTM Method D 790, Test for Flexural Properties of Plastics,[4] ASTM Method D 747, Test for Stiffness of Plastics by Means of a Cantilever Beam,[4] ASTM Method D 638, Test for Tensile Properties of Plastics,[4] or ASTM Methods D 882, Test for Tensile Properties of Thin Plastic Sheeting.[4] (1983)

Rohm & Haas Connecticut Inc.,
Kensington, CT, May 4, 1984.

Mr. **John J. Salmon,**
Chief Counsel, Committee on Ways and Means,
House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: I am a plant manager employed by the Rohm and Haas Company, Philadelphia, PA, in charge of a acrylic plastic sheet operation in Kensington, CT. I am writing to you in reference to HR5337, whose purpose is to amend the current Tariff Schedules so that all thicknesses of acrylic sheet are classified under one schedule instead of the current dual classification based on the subjective use of the term "flexible." A distinction is now arbitrarily made between sheet below 0.250" thickness and sheet above this thickness for tariff purposes.

Our employees at Kensington process millions of pounds of acrylic sheet annually and I assure you, the use of the word "flexible" to distinguish between "thick" and "thin" sheets which are otherwise physically and chemically identical is most puzzling to us. We manufacture all thicknesses on the same machines, using the same process, handling and packaging the material in identical fashion. To us "flexible" means capable of being bent without breaking. This, in turn, depends on the size and length of the material being tested and the nature of the test itself. In this respect, other materials (steel, glass, etc.) can be "flexed" but they are rarely, if ever, referred to as "flexible."

Our reason for concern is that importers of Taiwanese sheet are using the "flexible" distinction to secure duty free status for acrylic sheets under 0.250" in thickness. If the arbitrary distinction were eliminated then, under the competitive need limit, the overall limit for all acrylic sheet would be exceeded and the duty would apply to all such sheet of whatever thickness. From a practical, common sense point of view, then, this artificial device should be eliminated.

Our company has proposed that the Tariff Schedules provide a definition of the term "flexible" such that all thicknesses of acrylic sheet will then be classified under one item (771.45). Given the latitude accorded to the term "flexible" in the Webster's Dictionary definition, such a change would be perfectly compatible with the meaning contained therein.

As a leading domestic producer of plastic sheet (the only product made at our plant), we feel we can be competitive will all producers, domestic and foreign, if the rules under which imports and exports are clear and devoid of ambiguity. I urge that the provisions of HR5337 be enacted.

Sincerely,

Richard H. Cahill,
President.

STATEMENT OF R. R. VAN SICKLE, PRESIDENT AND PLANT MANAGER, ROHM & HAAS TENNESSEE, INC.

Rohm and Haas Tennessee Incorporated is a wholly owned susidiary of the Rohm and Haas Company with manufacturing facilities located in Knoxville, Tennessee. The Knoxville Plant is one of four Rohm and Haas plants in the United States which manufactures acrylic sheet sold under the trademark PLEXIGLAS.

Rohm and Haas Tennessee Incorporated manufactures acrylic sheet using the "cell cast" process only. Of the various methods used to manufacture acrylic sheet, cell casting is the one which produces the best quality, and the widest range of thicknesses. It is also, however, the most labor intensive and, therefore, the most expensive.

Because of the combination of the wide range of thicknesses that are possible and the inherent additional cost that goes with this capability, the misclassification of acrylic sheet—discussed below—has a particularly severe impact on Rohm and Haas Tennessee Incorporated.

Imports of acrylic sheet are currently classified under two separate provisions of the tariff schedules. The distinction between the two classifications is based on whether the sheets are considered "flexible" within a dictionary definition of "flexible." This dictionary approach results in the classification of acrylic sheets in thicknesses up to 0.250" as "flexible." This, in turn, has permitted "flexible" material to enter the United States from Taiwan free of duty.

We do not believe that the distinction between "flexible" and "other" as it presently exists is correct from either an historical or technical perspective. In short, we feel that we have been placed in a most difficult competitive position through an interpretation of the tariff schedules which was never intended. At the very least the present interpretation relies on a broad dictionary definition in place of a technical approach well documented and readily available.

We therefore, request that the tariff schedules call for the term "flexible" to be technically defined. We believe this action will properly cause all thicknesses of acrylic sheet currently imported to be classified under one item 771.45. The present system which classifies thicknesses up to 0.250" under Item 771.41 and thicknesses over 0.250" under Item 771.45 should be discontinued.

USS Chemicals,
Florence, Ky, May 15, 1984.

Re HR 5337.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: USS Chemicals Acrylic Sheet Unit is one of five major U.S. producers of acrylic sheet. There are at least ten other U.S. producers. The Company manufactures acrylic sheet at its plant located in Florence, Kentucky. USS Chemicals is a Division of U.S. Steel Corporation located in Pittsburgh, PA.

Based upon information reported to us, at least twenty firms imported acrylic sheet into the U.S. in 1982 and 1983 from at least thirteen foreign countries. The quantity and percent of U.S. market share represented by imported acrylic sheet has increased dramatically over the past 5 years. We have studied the Rohm & Haas Company's comments on HR 5337 as stated in their April 30, 1984 letter to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives. We fully concur with the comments of Rohm & Haas Company as stated in their April 30, 1984 letter and we would like to go on the record as being supportive of their position as stated in that letter. Specifically, we concur with the position of Rohm & Haas Company that it was not the original intent of Congress to allow acrylic sheet to be classified under two separate provisions of the Tariff Schedules. By adopting the changes to the Tariff Schedules as proposed by Rohm & Haas Company, unwarranted administrative burdens would be eliminated, while providing a uniform treatment in the tariff classification of acrylic sheet and restore to the Tariff Schedules the duty treatment originally intended by Congress to be applicable to sheets of acrylic resins.

We appreciate the opportunity to provide you with our comments on HR 5337. Please let me know if you or your staff have any questions on our submission or would like to discuss our comments in more detail.

Sincerely,

G. G. Layne,
General Manager, Acrylic Sheet Unit.

H.R. 5338

To provide for the temporary suspension of the duty on mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and magnesium nitrate.

STATEMENT OF ROHM & HAAS CO.

SUMMARY

Rohm and Haas Company (the Company) is a multinational manufacturer of chemicals and plastics with principal offices in Philadelphia, Pennsylvania.

The Company imports mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and magnesium nitrate as a proprietary line of chloromethylisothiazolinone based biocides which it sells under the trademark KATHON.

KATHON biocides are used in a wide variety of applications ranging from that of a preservative for cosmetics and household chemicals to a slimicide in paper mills and in industrial recirculating-water cooling towers. They are in demand because they are slow acting and long lasting, and are effective at extremely low use levels compared to competitive biocides.

There are no commercial manufacturers of chloromethylisothiozolinone based biocides in the United States.

Prior to importation beginning in September 1983, KATHON products were manufactured in the Company's Philadelphia plant semi-works. At maximum output, a total of twenty one hourly employees were involved in the production of KATHON. Of these, eight remain assigned to the semi-works. The other thirteen have been reassigned to other jobs or promoted to non-exempt jobs. Thus, no jobs were lost when production was transferred overseas.

The revenue that would be foregone by enactment of H.R. 5338 is estimated to total approximately $3MM from the first importation in 1983 through 1986.

RECOMMENDATION

We support H.R. 5338 to suspend the duty on chloromethylisothiozolinone based biocides since these products are not manufactured in the United States and they are in demand by U.S. industry for a wide variety of applications in which they have demonstrated superior cost effectiveness.

ROHM AND HAAS COMPANY'S COMMENTS ON

HR-5338

- a bill to provide for the temporary suspension of the duty on mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and magnesium nitrate.

Product Description and Composition

Kathon ®* Biocides

	Kathon 886F	Kathon CG
5-chloro-2-methyl-4-isothiazolin-3-one[1]	10-11%	1.05-1.25%
2-methyl-4-isothiazolin-3-one[2]	3-4%	0.25-0.45%
magnesium chloride[2]	8-9%	0. 5-1.0%
magnesium nitrate[3]	15-17%	21-23%
water	60-62%	74-77%

[1] active ingredient

[2] reaction by-product

[3] stabilizer

* Kathon is a registered trademark of Rohm and Haas Company.

Typical End Uses

Kathon 886F - preservative for metal-working fluids, water-based paints and other latex polymers; slimicide for paper and pulp mills; prevention of growth in oil and gas-field injection water and in industrial recirculating-water cooling towers and air washers

Kathon CG - preservative for cosmetics, toiletries, floor polishes, fabric softeners, dishwashing liquids

Product History

First sale outside the United States - 1974
First sale in the United States - 1976

Location for Production Facilities

Jarrow, U.K. - at Rohm and Haas U.K., a wholly-owned subsidiary of Rohm and Haas Company (USA)

Dedicated new world scale plant at Jarrow started up in the 3rd Quarter of 1983.

Production in semi-works at Rohm and Haas Company's Philadelphia, PA plant to be discontinued in the 1st Quarter of 1984. Demand outran capacity, necessitating construction of new facilities. Semi-works continues in service for scale-up projects and production of limited volume chemicals.

Other Manufacturers

None - domestic or foreign.

Patent coverage in the United States and in major western countries extends into the 1990's (Exhibit A).

Raw Material Sources

	Source	Share of U.S. Capacity* Used When Production of Kathon Products was Based in the United States
methyl 3 mercaptopropionate	U.K. & U.S.	< 2%
monomethyl amine	Non-U.S.	< 0.2%
chlorine		< 0.1%
magnesium oxide		< 0.1%
magnesium nitrate		< 1%

* Based on world market for Kathon products in 1983. U.S. market for Kathon products is less than 50% of world market.

Customer Need

Kathon biocides are in demand because they are slow reacting, long lasting and effective at extremely low use levels compared to competitive biocides. These benefits result in:

- significant cost/performance advantages over competitive biocides
- less potential for hazard to people due to contact with finished product formulations incorporating Kathon
- less potential for environmental hazard
- less potential for disturbing the esthetics (color and/or odor) of finished product formulations, as in cosmetics

Competitive Products

There is a wide variety of biocides in use today. None offer the customer the advantages of Kathon, as outlined above. Effectiveness at low use levels is a particularly important factor in the customer's choice of biocide. A comparison of recommended use levels for Kathon and competitive biocides in several major applications is shown in Exhibit B.

Present Tariff Classification

Item 432.25 TSUS - Mixtures not specially provided for: Other: Other:

Duty Rate

7.9% ad valorem - the highest rate applicable to any component in Kathon - from item 425.52 TSUS; Nitrogenous compounds: Other: Other:

Revenue Impact of Proposed Suspension of Duty

Duties first payable when imports of Kathon began (September 1983) would be foregone.

There would be no revenue impact of the proposed suspension of duty compared to the situation prevailing when Kathon products were manufactured exclusively in the United States (1974 through August 1983).

Kathon products and the active ingredients in Kathon products were manufactured and sold in the United States from 1974 through August 1983 without payment of duty. Kathon was first imported into the United States in September 1983.

EXHIBIT A

ROHM AND HAAS COMPANY

PRINCIPAL UNITED STATES PATENTS COVERING 5-CHLORO-2-METHYL-4-ISOTHIAZOLIN-3-ONE AND ITS SELECTED END USES

Patent Number	Expiration Date	Subject
3,761,488	9/25/90	3-isothiazolone compounds
4,105,431	8/08/95	Biocidal compositions and uses
4,234,403	1/06/98	Coatings containing 3-isothiazolones
4,279,762	7/21/98	Cutting oils containing 3-isothiazolones
4,252,694	2/24/98	Cleaning compositions containing 3-isothiazolones
4,265,899	5/05/98	Cosmetic formulation containing 3-isothiazolones as biocides

EXHIBIT B
Page 1 of 2

COMPARISON OF RECOMMENDED USE LEVELS OF KATHON AND COMPETITIVE BIOCIDES

Application	Biocide Product	 Supplier	 Type	Recommended Use Level (parts per million-active ingredient
Latex Emulsion Products	Kathon 886F	Rohm and Haas	non-benzenoid isothiazolinone	7-50
	Proxel CRL	ICI	benzenoid isothiazolinone	130-300
	formaldehyde	various	formaldehyde	500-1000
	Givgard DXN	Givaudan Chemical, Division of Hoffmann-LaRoche	formaldehyde releaser	250-1000
	Dowicil 75	Dow	formaldehyde releaser	500-4000
Metal-Working Fluids	Kathon 886F	Rohm and Haas	non-benzenoid isothiazolinone	3.5-175
	Bioban 1487	Angus	formaldehyde releaser	90-900
	Tris-Nitro	Angus	formaldehyde releaser	1000
	Grotan	Lehn & Fink	formaldehyde releaser	1250
Oil-Field Injection Water	Kathon 886F	Rohm and Haas	non-benzenoid isothiazolinone	0.5-5
	Ucarcide	Union Carbide	gluteraldehyde	12.5-50
	formaldehyde	various	formaldehyde	500-2000

EXHIBIT B

Page 2 of 2

COMPARISON OF RECOMMENDED USE LEVELS OF KATHON AND COMPETITIVE BIOCIDES

Application	Biocide			Recommended Use Level (parts per million-active ingredient)
	Product	Supplier	Type	
Cosmetics Preservation	Kathon CG	Rohm and Haas	non-benzenoid isothiazolinone	3-15
	Dowicil 200	Dow	formaldehyde releaser	300-3000
	formaldehyde	various	formaldehyde	500-2000
	Parabens	various	phenolic	1000-3000

AJS/lfw
10/10/83

Washington Letter

BY JOHN FITZROY

THAT SHAMPOO RECALL
Store brands for such widely known chains as Adams Drug, Drug Guild, Filene's, Kerr Discount Drug Stores, J.C. Penney, Shopper's Drug Mart, Seaway Foods, Universal Cooperatives, and the Good Circle Division of Federated Stores (plus more than a dozen more) are included in what some FDAers are calling the largest such recall in recent history. Manufacturer of all these store brands is Pennex Products Co., Verona, Pa. and it altogether involves some 680,000 bottles of shampoo.

In an unusual press release issued late in April, FDA described the shampoos as "contaminated by bacteria that could infect scratched or cut skin or scratched eyes. Underlying cause, suggests The Rose Sheet (May 9), was concern about the potential dangers of formaldehyde, which has come under attack by consumerists in the past year. Pennex had been using formaldehyde in all the brands but switched to Kathon, reportedly in anticipation of an expected FDA ban (which did not materialize) or to avoid publicity. Instead, Pennex generated adverse publicity in newspapers all over the country, had to institute a costly recall, and decided to replace its water de-ionizer and reformulate its products to counter bacterial contamination of future production lots.

HAYES IMPROPRIETIES GET BY
FDA Commissioner Arthur Hull Hayes came within a whisker in April of being asked to resign because of eight alleged irregularities involving travel expenses and speaking honorariums, Washington insiders suggest. In fact, one journalist expressed "surprise" that Hayes survived that month in office. Deliverance came for Dr. Hayes when U.S. Attorney Frederick Motz told the HHS Secretary that he decided to "decline prosecution" of Dr. Hayes despite indications that the Commissioner's acceptance of honoraria "may arguably be judged to be unlawful . . . there is no evidence to suggest that the two honoraria were paid to influence any official action by Dr. Hayes." During the Carter Administration, FDA had a painstakingly worded policy to prevent its administrators accepting speaking honoraria or travel expenses. Mr. Motz described Dr. Hayes' explanation for his conduct as "troublesome and not free from doubt, but I am not convinced that he knowingly and willfully violated the law."

Mr. Motz said the two honoraria, $250 for two speeches at a Philadelphia medical meeting, $500 for a commencement address at Penn State University, were "modest" and that Hayes already returned one of them.

MISCELLANY
A two-month reprieve has been given D&C Red No. 19 and 37 by the Food & Drug Administration, providing more time (until June 30) for the agency to issue its final safety decision on the colors. One factor that will be taken into account is the Cosmetic, Toiletry & Fragrance Association's skin penetration studies. Another is the agency's basic approach to colors that may provide carcinogenic evidence in test animals, and how that "carries over" to its potential in humans who may be exposed to considerably smaller amounts.

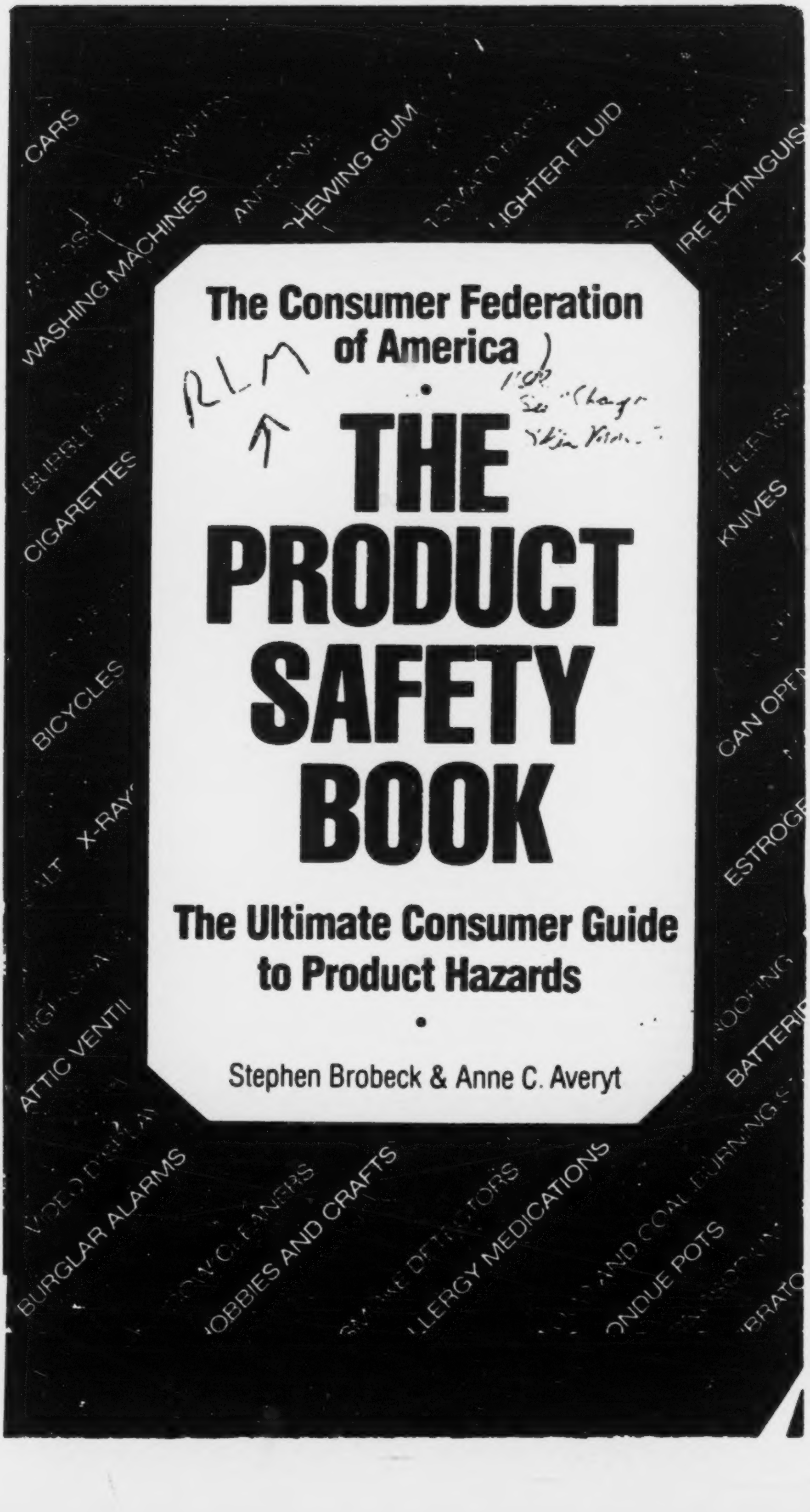
Intergovernmental Relations Subcommittee hearings on Zomax (zomepirac sodium) suggest that the analgesic may not return to the market for several months, if at all. McNeil Division of J&J likely will have to re-label and probably warn against use of the product in any long-term way in anything but a limited patient population, suggests testimony before the Weiss Subcommittee. The chairman, a New York Democrat, criticized the FDA for not taking earlier action after late 1981/early 1982 reports of anaphylactic reactions to the drug.

The Cosmetic, Toiletry & Fragrance Association and individual companies have responded to that FDA regulation calling for a bubble bath warning. The trade association, in particular, points out that marketers have been making "significant changes" in formulation to reduce the use of alkylarylsulfonates, singled out by the agency as causing urinary tract infections in female children. Other marketer petitions mention "economic hardship" on marketers and what the mandatory warning might do to the market

Washington Letter

BY JOHN FITZROY

A CORRECTION: In June; this column garbled the details of the corrective action taken by Pennex as to the reformulation done after removal of formaldehyde from its shampoo products. The column could have been interpreted that Kathon CG was the preservative used in the recalled products. This was not the case, since that preservative wasn't used in any of the recalled products. Pennex did drop formaldehyde for an alternative preservative which proved ineffective and this resulted in the subsequent recall because of bacterial contamination. What finally helped resolve the problem and permitted reintroduction of these products was a second reformulation using Kathon CG, the Rohm & Hass preservative that has achieved widespread success since its introduction a few years ago.



The Consumer Federation of America

RLM

[illegible] See "Change [illegible]

THE PRODUCT SAFETY BOOK

The Ultimate Consumer Guide to Product Hazards

Stephen Brobeck & Anne C. Averyt

CARS
WASHING MACHINES
CHEWING GUM
LIGHTER FLUID
IRE EXTINGUIS
CIGARETTES
KNIVES
BICYCLES
CAN OPE
X-RAY
ESTROG
ATTIC VENTI
BATTERI
BURGLAR ALARMS
HOBBIES AND CRAFTS
LLERGY MEDICATIONS
ONDUE POTS

SHAMPOOS *(See also Shampoos, Baby; Shampoos, Dandruff)*

HAZARDS

Shampoos contain ingredients that can produce eye and skin irritation; can be poisonous to children who are attracted by the fragrant, colorful contents of the shampoo bottles; or can increase the risk of cancer.

Eye and skin irritation are the most common side effects of shampoo products. But while nearly all shampoo products can irritate if they get into the eyes, certain ingredients are more likely to cause irritation or serious damage than others. Abnormally irritating shampoos can cause painful eye inflammation, conjunctivitis, and sometimes chemical burns, clouding of the cornea, and temporary impairment of vision. Lauryl or laureth sulfates are the most irritating ingredients to the eye, whereas nonionic and amphoteric detergents are much less irritating.

Formaldehyde, a preservative found in some shampoos, can be irritating to both the eyes and the skin. Quaternium-15, which releases formaldehyde, is another preservative that may cause an allergic skin reaction. Natural conditioning agents such as balsam, vitamin E, coconut oil, and cocoa butter can also produce skin irritation.

Dowicil

Boric acid is occasionally added to shampoo products as a pH balance, but it is absorbed rapidly through damaged skin and can be hazardous. Swallowing or absorbing boric acid through damaged skin can cause nausea, vomiting, circulatory system collapse, liver damage, convulsions, and coma. Although there are no reported incidents of boric acid poisoning from shampoo products, caution should be used.

Another source of concern with shampoo products is the presence of nitrosamines that have been proven to be very carcinogenic in animals. Nitrosamines are formed when an amine, such as triethanolamine (TEA) or diethanolamine (DEA) reacts chemically with a nitrosating agent, such as sodium nitrite or 2-bromo-2-nitroprone-1,3-diol (BNPD). Although nitrosamines are not put into shampoos, they can form when the TEA or DEA, which are found in hundreds of shampoo formulations, come in contact with a nitrosating agent. This often occurs on a random basis—one bottle of a shampoo may be contaminated with nitrosamines, whereas another bottle of the same brand may not. Nitrosamines are absorbed through the skin, and may expose a user to far higher levels of the cancer-causing agent than eating nitrite-cured bacon. BNPD is a nitrosating agent that is still found in some cosmetic products. Avoid all cosmetic products containing this chemical. In shampoos containing TEA or DEA as well as BNPD, cancer-causing nitrosamines can be formed. In addition, BNPD can combine with the amines in the skin or in the body to form nitrosamines.

Bronopol

PRECAUTIONS

There are many different shampoo formulations on the market. If formaldehyde irritates your skin, select a shampoo that does not contain this ingredient. If irritation is a problem for you, it may be best to avoid the natural conditioning agents as well and also products containing quaternium-15. Because of their potential for hazard, it may also be wise to avoid shampoos containing boric acid and DEA and TEA. Never use products containing BNPD.

All cosmetic products and medications should be kept out of the reach of small children. Some shampoo detergents—such as the lauryl and laureth sulfates, potassium cocohydrolyzed animal protein, sarcosines and sarcosinates, the sulfosuccinates, and sodium methyl oleoyl sulfate and sodium lauryl isoethionate—can be toxic if swallowed. Quaternary ammonium compounds in shampoos are internal poisons as well.

SHAMPOOS, BABY *(See also Shampoos)*

HAZARDS

Certain chemical ingredients in no-sting shampoos can anesthetize the eyeball. While this is not a dangerous occurrence, it can cause people to overlook other serious irritations or injuries to the eye, since these products can numb the eyes for up to seven hours.

Some baby shampoos also contain formaldehyde, which is a strong skin sensitizer.

SHAMPOOS, DANDRUFF *(See also Shampoos)*

HAZARDS

Antidandruff shampoos usually contain toxic ingredients and should be handled with care and kept out of the reach of children. The antidandruff chemical ingredient selenium sulfide is highly toxic, acting very much like arsenic. It can cause liver, kidney, heart, spleen, stomach, bowel, or lung damage and may be fatal even in small swallowed amounts. Zinc pyritione and salicylic acid are less toxic. Colloidal sulfur is probably the safest ingredient, though it is still moderately toxic if swallowed.

Perhaps the most dangerous ingredient in antidandruff shampoos is resorcinol. Although it is not as toxic as selenium sulfide, if swallowed, it is absorbed through the skin very quickly while selenium sulfide is not absorbed in any significant amount.

H.R. 5339

To provide for the temporary suspension of the duty on mixtures of potassium 1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate ("Fenridazon-potassium") and formulation adjuvants.

Statement of Rohm & Haas Seeds, Inc.

SUMMARY

Rohm and Haas Seeds, Inc. (the Company) is an affiliate of Rohm and Haas Company, a multinational manufacturer of chemicals and plastics with principal offices in Philadelphia, Pennsylvania.

The Company imports fenridazon-potassium for exclusive use in the production of hybrid wheat seed, which is then sold in the United States and in other countries.

There are no commercial manufacturers of fenridazon-potassium in the United States and, to our knowledge, no other commercial applications for fenridazon-potassium in the United States or elsewhere.

Prior to importation beginning in April 1984, fenridazon-potassium was manufactured in the Life Sciences Pilot Plant at Rohm and Haas Company's Bristol, Pennsylvania plant. At maximum output, a total of three hourly employees were involved. All three employees are now working on other projects in the Pilot Plant. Thus, no jobs were lost when production was transferred overseas.

The revenue that would be foregone by enactment of H.R. 5339 is estimated to total approximately $500M for the three year period 1984–1986.

RECOMMENDATION

We support H.R. 5339 to suspend the import duty on fenridazon-potassium since this product is not manufactured in the United States and its use in the production of hybrid wheat seed will be of substantial benefit to the United States. More rapid development of new hybrids will lead to increased crop yields and lower costs which will help hold the line against rising food costs in the U.S. and help U.S. farmers remain competitive in world markets.

ROHM AND HAAS COMPANY'S COMMENTS ON
HR-5339

-A bill to provide for the temporary suspension of the duty on mixtures of potassium 1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3 carboxylate (fenridazon-potassium) and formulation adjuvants.

Product Description and Intended End Use

Hybrex™ is a trademark of Rohm and Haas Company.

Hybrex 2LC is a plant growth regulator in the form of a water solution of fenridazon-potassium (active ingredient) and formulation adjuvants which inhibit the development of pollen on wheat, permitting production of hybrid wheat seed by selective cross-pollination.

Hybrex 2LC is manufactured for Rohm and Haas Seeds Inc., an affiliate of Rohm and Haas Company, for exclusive use by Rohm and Haas Seeds Inc. in the production of hybrid wheat seed. There are no plans to make Hybrex 2LC available for sale to other companies in the United States or elsewhere.

Other End Uses

To our knowledge, there are no other commercial end uses for Hybrex 2LC or for the active ingredient, fenridazon-potassium.

Product History

First use for production of hybrid wheat seed in the United States - 1982

First use for production of hybrid wheat seed outside of the United States - 1984

Location of Production Facilities

Production of Hybrex 2LC in semi-works facilities at Rohm and Haas Company's Philadelphia, PA and Bristol, PA plants is to be discontinued in 1984 because demand has outgrown capacity.

Beginning in 1984, Hybrex 2LC will be manufactured in multi-purpose production facilities available in the United Kingdom. These facilities will require only limited modifications to make them suitable for use in the production of Hybrex 2LC, thus avoiding the multi-million dollar investment required to construct a new, dedicated, single product plant.

Other Manufacturers

None - domestic or foreign.

Patent coverage in the United States and in major western countries extends into the 1990's. See U.S. Patent 4,345,934, August 24, 1982.

Raw Material Sources

The principal raw materials used in the production of Hybrex 2LC are specialty chemicals. When production of Hybrex 2LC is shifted from the United States to the United Kingdom, the same sources will be used for these raw materials.

The rest of the raw materials used in the production of Hybrex 2LC are commodity chemicals which are freely available in world markets. Less than 0.1% of U.S. capacity for each of these raw materials was required for the production of Hybrex 2LC in the United States in 1983.

Need for the Product

Hybrex 2LC is a chemical hybridizing agent which inhibits the development of pollen on wheat, thereby enabling fast and efficient production of hybrid wheat seed. The only alternative method, in common use today, is to breed-in male pollen sterility using the cytoplasmic male sterile system, a much more time consuming, more expensive process. The benefits of the use of Hybrex 2LC compared to the cytoplasmic male sterile system include:

- an increase in the probability of identifying new hybrids for development into seed stock
- more rapid scaleup to commercial production once a new hybrid is identified
- a reduction in the number of years (growing seasons) required to develop new hybrid seed stocks to the point of general commercial availability
- a reduction in the total cost of developing new hybrid seed varieties compared to the only other method currently available.

Competitive Products (Chemical Hybridizing Agents)

None

Present Tariff Classification

Item 408.38 TSUS - Pesticides *: Other: Other:

* Hybrex 2LC is a herbicide (plant growth regulator). Herbicides are included in the TSUS as pesticides.

Duty Rate

0.8 /lb. + 9.7% ad valorem

Revenue Impact of Proposed Suspension of Duty

Duties first payable when imports of Hybrex 2LC begin (early 1984) would be foregone.

There would be no revenue impact of the proposed suspension of duty compared to the situation prevailing when Hybrex 2LC was manufactured exclusively in the United States (1981 through early 1984). Hybrex 2LC has been manufactured in the United States since 1981 and used in the United States for the commercial production of hybrid wheat seed since 1982 without payment of duty.

H.R. 5368

To suspend for a 3-year period the duty on amiodarone.

American Heart Association,
Washington, DC, April 18, 1984.

Hon. Dan Rostenkowski,
U.S. House of Representatives,
Washington, DC.

Dear Congressman Rostenkowski: On April 4, 1984, Congressman Don Sundquist (R-TN) introduced H.R. 5368, legislation to suspend for a three year period the duty on amiodarone, an antiarrythmic drug not yet marketed in the United States.

The American Heart Association and the American College of Cardiology strongly support this legislation and ask that you as a Member of the Subcommittee on Trade give it favorable consideration.

Amiodarone has been demonstrated to be a highly effective antiarrythmic drug which is currently on the market in several European countries. The drug has not been approved for marketing in the United States but a New Drug Approval application for the drug is presently pending before the Food and Drug Administration's Cardio-Renal Drugs Advisory Committee. There are presently a few hundred investigators in the U.S. who have obtained IND's (investigation new drug applications) through the FDA and who are conducting research on the drug and using it in controlled clinical settings. Until the FDA acts one way or the other in granting an NDA, the drug will continue to be extremely expensive. Most of the individuals who have IND's have to find additional sources of revenue to pay for this drug which is estimated to cost as much as $5,000 per year per patient.

A temporary suspension of the duty on amiodarone will allow investigators to continue to conduct the essential research on this drug until such time as the Food and Drug Administration approves (or disapproves) the drug for marketing in the United States.

You will find attached some scientific background literature on the drug which we hope you will find of some interest [retained in subcommittee files]. If we can answer any questions that you might have, please feel free to contact us.

Sincerely,

John F. Williams, M.D., F.A.C.C.,
President, American College of Cardiology.

Antonio M. Gotto, M.D., D. Phil.,
President, American Heart Association.

H.R. 5389

To temporarily suspend until September 30, 1988, the duty on tetra amino biphenyl.

No comments were received on this bill.

H.R. 5410

To extend duty-free treatment to scrolls or tablets imported for use in religious observances.

No comments were received on this bill.

H.R. 5422

Relating to the tariff classifications of certain silicone resins and materials.

STATEMENT OF JOHN HAWKE, DOW CORNING CORP., MIDLAND, MI

Over the last few years, U.S. producers of silicones have been subject to increasing competition from foreign producers in the U.S. market. Very recently these foreign producers have been making impressive gains in market share and the rate at which those gains are being made is accelerating.

The foreign producers owe their good fortune, in part, to the fact that the Tariff Schedules of the United States (TSUS) make it possible for silicones from abroad to be treated in a more generous fashion than U.S. produced silicones are treated when they arrive at the shores of our principal trading partners. The TSUS treatment of silicone products is currently confusing with various forms of silicone falling under different classifications with different tariff rates. The majority of our trading partners use tariff systems that have one classification for all forms of silicone and a single high tariff rate.

Initially, attempts were made with the U.S. Customs Service to rationalize the classification of silicones. These attempts were unsuccessful as the Customs Service has no authority to revise classifications. But rationalization is definitely needed. International Trade Commission (ITC) data shows that a large portion of the silicones currently being imported is misclassified. For example, 95% of the silicones classified as organosilicon compounds and therefore brought in at a duty rate of 4.2% should more properly have been classified as silicones and brought in at a duty rate of 8.6% plus 1.1¢ per pound. Both the Customs Service and the ITC have suggested that the legislative route should be used to eliminate the ambiguity in the current treatment of silicones.

H.R. 5422 incorporates the following changes:

(1) The modification of Schedule 4, Part 4 of the TSUS to create an item that specifically identifies silicone resins and materials.

(2) A headnote change for this Schedule to assure inclusion (by elimination of a requirement that materials are "solid in the finished article") of all forms of silicone products in this new comprehensive category.

(3) A modification to the synthetic rubber classification to eliminate the silicone reference under 446.15 with 1.1% ad valorem and inserting a silicone reference under 446.16 with 1.1¢ per pound plus 8.6% ad valorem.

These changes will allow clear indentification and one tariff schedule for all forms of silicone within the classifications. Much of the disadvantage to U.S. silicone producers will be eliminated. The inequity of a foreign producer bringing a silicone elastomer, for example, into the U.S. at a 1.1% rate by calling it snythetic rubber while a U.S. producer would be paying 10% to take the same product into a foreign country will be removed. The changes will also facilitate U.S. Customs Service classification of silicone products and allow the generation of import statistics that will be more consistent with U.S. export statistics and trade statistics of other countries.

The continuing viability of the U.S. silicone industry is of critical importance not only because of the jobs it generates, but also because the silicone industry is the supplier of many high technology products having important military and aerospace applications. The U.S. silicone industry needs to be assured of equal and fair treatment in the worldwide silicone markets. These changes will bring the U.S. in line with other trading countries and remove a major disadvantage to U.S. industry.

FREEMAN, WASSERMAN & SCHNEIDER
ATTORNEYS AND COUNSELLORS AT LAW
90 JOHN STREET
NEW YORK, NEW YORK 10038
(212) 619-1770
CABLE TRADEJURIS NEW YORK
TELEX 125907
TELECOPIER (212) 227-6734

MELVYN FREEMAN
JACK GUMPERT WASSERMAN
LOUIS SCHNEIDER
BERNARD J. BABB
JAMES M. BRACHMAN
DAVID M. COHEN
RICHARD E. GRIMM
PHILIP Y. SIMONS

EUROPEAN OFFICE
RUE DU TACITURNE, 42
1040 BRUSSELS, BELGIUM
TELEPHONE 02-230-6608
TELEX (846) 61975

May 9, 1984

John J. Salmon
Chief Counsel
Committee on Ways and Means
United States House of Representatives
Room 1102
Longworth House Office Building
Washington, D.C. 20515

HR 5422
Tariff Classification of
Silicone Resins and Materials

Dear Mr. Salmon:

This letter is submitted on behalf of our client, General Electric Company, Silicone Products Division, Waterford, New York 12188, a major United States producer of silicone resins and products. General Electric supports HR 5422, legislation that would unify the rate of duty applicable to silicone products.

Silicone polymers are provided for in the Tariff Schedules under item 445.56, TSUS, as "Synthetic plastics materials *** Other" and are assessed with duty at the rate of 1.1¢ per pound plus 8.6% _ad valorem_. Further, silicone polymers are specifically defined in Headnote 2 of Subpart A of Part 4, Schedule 4 of the Tariff Schedules as a synthetic plastics material.

General Electric believes that all silicones polymers are properly provided for under Tariff Schedules item 445.56. However, it is General Electric's understanding that the Customs Service considers certain silicone polymers which are elastomeric to be properly provided for under item 446.15, TSUS, as "synthetic rubber" if the "stretch and return" test set forth in Headnote 2(a)(ii) of Subpart B of Part 4, Schedule 4 of the Tariff Schedules is satisfied. Silicone polymers classified under item 446.15, TSUS, are assessed with duty at the rate of 1.1% ad valorem.

General Electric believes that the Customs Service's classification of silicone elastomers is contrary to the legislative history of item 446.15, TSUS, and applicable Customs jurisprudence. General Electric's views are set forth in detail in memoranda submitted to the International Trade Commission (the "Commission") and the Office of the United States Trade Representative in connection with the conversion of the Tariff Schedules of the United States Annotated to the Nomenclature Structure of the Harmonized System.* (Copies of these submissions are attached for your convenience.)

Due to concern about the Customs treatment and the inability of the domestic industry to obtain an accurate picture of silicone elastomeric polymer imports, a major United States producer requested, in 1980, that the Commission insert into the Tariff Schedules a specific provision for elastomeric silicone polymers, at the rate of duty applicable to silicone plastics materials. However, as limited by its legal authority, the Commission could only promulgate statistical provisions subordinate to the legal (duty rate) provisions. The statistical provisions promulgated were items 446.1533 and 446.1580, TSUSA, and the rate of duty applicable is that applied to synthetic rubber.*

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* Under the Brussels Tariff Nomenclature ("BTN"), all silicones are provided for under a single item, Heading 39.01(c)VI.

The concern of the domestic silicone industry about increased imports was not illusionary. The following table reflects the significant increase in importations of the silicones, especially silicone "synthetic rubber".

	Silicone Synthetic Plastics Materials		Silicone Synthetic Rubber	
	Quantity (lbs)	Value	Quantity (lbs.)	Value
1981	349,000	$1,028,593	1,733,000	$3,414,561
1982	702,000	$1,149,527	2,959,000	$3,969,590
1983	1,607,000	$3,083,240	6,035,000	$7,076,460

From 1981 to 1983, silicones classified under Tariff Schedule item 446.15 increased almost 250% in term of quantity and over 100% in terms of value. Of most importance is the fact that over seventy-five percent of all silicones imported into the United States were assessed with the low rate of duty of 1.1% *ad valorem*. United States producers are placed at a significant trade disadvantage relative to their international competitors, especially companies located in the European community. All silicone polymers imported into the European Community are assessed with a rate of duty of 11.9% *ad valorem*.

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* For statistical purposes, silicone plastics materials are provided for under item 445.5660.

General Electric supports HR 5422. This legislation will unify the rate of duty applicable to silicones. Further, the United States tariff treatment of silicones would parallel the uniform treatment of such material by its European trading partners without disturbing a long standing Customs Service classification practice.

Respectfully submitted,

FREEMAN, WASSERMAN & SCHNEIDER
90 John Street
New York, New York 10038
Counsel for GENERAL ELECTRIC

Of Counsel:
Louis Schneider
Philip Yale Simons

BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE

In The Matter Of The:

CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED INTO THE NOMENCLATURE STRUCTURE OF THE HARMONIZED SYSTEM

CHAPTER 39

PLASTICS AND ARTICLES THEREOF

Silicones - Headings
3910.00.10, 3910.00.20 and 3910.00.50

Of Counsel:

Louis Schneider
Philip Yale Simons

FREEMAN, WASSERMAN & SCHNEIDER
90 John Street
New York, New York 10038
(212) 619-1770

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BEFORE THE TRADE POLICY STAFF COMMITTEE OF THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

I.

INTRODUCTION AND BACKGROUND

On June 30, 1983, the United States International Trade Commission (the "Commission") released its report on the Conversion of the Tariff Schedules of the United States Annotated to the Nomenclature Structure of the Harmonized System (the "Harmonized System")[1]. On August 1, 1983, the Trade Policy Staff Committee (the "TPSC") of the Office of the United States Trade Representative requested specific comments on the "new converted Tariff Schedules".[2]

This memorandum is submitted on behalf of General Electric Company, Silicone Products Division, Waterford, New York 12188, a major United States producer of silicone products. Its purpose is to suggest simplification of the classification format for silicones in Chapter 39 of the Harmonized System and harmonization with the treatment such products obtain under the European Economic Community format of the Harmonized System. Specifically, we urge the TPSC to provide for a single provision for silicones in primary form rather than affirming the Commission's scheme of classification in which silicones in primary form are provided for under three individual headings. There is no basis for creating three provisions with greatly different rates of duty. A single provision for "silicones in primary forms", with the rate of duty now applicable to silicone resins, would preserve the current tariff rate schedule, would be in accord with our trading partners classification scheme, and allow domestic producers of these chemicals to compete on equal terms in the international marketplace.

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[1] USITC Publication 1400 (June 1983).

[2] 48 Fed. Reg. 34822 (August 1, 1983).

The Commission prepared a new tariff classification system to replace the Tariff Schedules of the United States pursuant to the President's request that the Commission propose domestic legislation in connection with an effort by the Brussels-based Customs Cooperation Council to devise an international "Harmonized System" of nomenclature for articles of commerce. The Commission's report was sent to the President on June 30, 1983, for subsequent enactment by Congress.

The ultimate goal of the international effort is to create a single worldwide system of merchandise classification for purposes of customs tariffs, government trade and transport regulations, and statistical reporting. There is an international target date of January 1, 1985, for worldwide acceptance of the new "Harmonized System" by means of international agreement.

It is expected that the provisions of the new United States "Tariff Schedules" will be identical to the provisions of the new international "Harmonized System" insofar as it is subdivided to the six-digit (or "subheading") level. All additional tariff distinctions are discretionary at the eight-digit level. The Commission was authorized to draft eight-digit "items" (as subindentations of each six digit subheading) if such subdivisions are necessary to accomplish its purposes. In the present instance, the Commission adopted three "items" which are not necessary. A single "item" clearly suffices to categorize all "silicones in primary forms". We suggest that the unnecessary subdivision of heading 3910.00 be eliminated. All silicones are "resins" as defined in the Tariff Schedules and should be classified as such. There is no need to provide separately for elastomeric, dimethylsiloxane fluids and other silicones.

The Presidential guidelines under which the Commission conducted its investigation direct that:

> In converting the tariff schedules the Commission should avoid, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products. However, the U.S. tariff structure should be simplified to the extent possible without rate changes significant for U.S. industry, workers, or trade. Within these guidelines, the Commission should suggest modifications to the rate structure which, in the Commission's judgment,

would alleviate administrative burdens on the Customs Service.[3]

Our request is in complete accord with the guidelines of the President in that it would: (i) simplify the United States tariff structures; (ii) avoid any significant rate change on imported merchandise; (iii) cause no harm to United States industry, workers, or trade; and (iv) alleviate administrative burdens on the Customs Service. Unless the TPSC modifies the subdivision of heading 3910.00, the Harmonized System as drafted would needlessly complicate the tariff structure, create administrative burdens, and threaten harm to United States industry, workers, and trade.

II.
DESCRIPTION OF SILICONES

Silicones are a large group of substituted siloxane[4]

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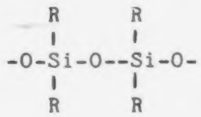
[3] 46 Fed. Reg. 47897 (September 30, 1981).

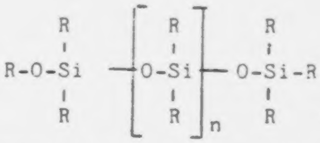
[4] Siloxanes are compounds analogous to straight chain hydrocarbons but consisting of a skeletal backbone of silicon atoms single bonded to oxygen atoms so that each silicon atom is combined with four atoms other than silicon at least two of which are oxygen atoms. The siloxane molecular structure is:



$$-O-\underset{R}{\underset{|}{\overset{R}{\overset{|}{Si}}}}-O--\underset{R}{\underset{|}{\overset{R}{\overset{|}{Si}}}}-O-$$

(footnote cont'd)

polymers possessing a repeating skeleton structure of alternating silicon and oxygen atoms. Various organic radicals are attached to the silicon atoms. Silicones can be structurally represented as:



$$\mathrm{R{-}O{-}}\overset{\mathrm{R}}{\underset{\mathrm{R}}{\mathrm{Si}}}\left[\mathrm{{-}O{-}}\overset{\mathrm{R}}{\underset{\mathrm{R}}{\mathrm{Si}}}\right]_n\mathrm{{-}O{-}}\overset{\mathrm{R}}{\underset{\mathrm{R}}{\mathrm{Si}}}\mathrm{{-}R}$$

The symbol "R" represents an organic radical.

All silicones are resins as defined in the Tariff Schedules and differ only in the character of the "R" groups and the amount of branching and length of the silicon-oxygen skeleton. The amount of cross-linking between the linear silicon-oxygen chains determines the physical properties of the silicone, i.e., whether it will be fluid or solid. The more extensive the cross-linking the greater the rigidity. However, all silicones belong to the same chemical family. There is no chemical or commercial basis for distinguishing between particular polymers in primary or other form.

Our client produces over 2000 product grades of silicones. Silicones have hundreds of industrial applications, some of which are:

A number of organic radicals (e.g., methyl, phenyl, vinyl) may be linked to the silicon atoms.

As molding release agents for rubber, plastics, and metals (fluids and emulsions);

As antifoams in industrial operations such as food processing;

As hydraulic or heat transfer fluids;

As dielectric fluids or compounds;

As lubricating greases;

As high-temperature, weather-durable, abrasion-resistant, or electrically insulating coatings;

As release coatings for paper;

As surfactants in generating polyurethane foams;

As molded rubber parts for high/low temperature resistance or special electrical properties;

As gloss-improving and friction-reducing agents in car and furniture polishes and many other household products;

As volatile, non-staining, non-allergenic carriers for personal care products such as antiperspirants;

As extruded electrical insulation for high temperature or safety cables;

As sealants for glazing, weatherproofing, gasketing and other industrial applications, and for home use;

As encapsulants for electronic devices or circuitry;

As adhesives; and

As elastomeric molds for plastic molding.

Despite the multiple purposes which specially designed silicone resins may serve, the silicones in primary form are definitionally resins. The United States should join its trading partners in treating all of these silicones as plastics in primary form.

III.
TARIFF CLASSIFICATION UNDER THE COMMON CUSTOMS TARIFF

Under the Common Customs Tariff, silicones are specifically provided for under item 39.01 C VI of Section VII, Chapter 39 which provides for:

SECTION VII

ARTIFICIAL RESINS AND PLASTIC MATERIALS, CELLULOSE ESTERS AND ETHERS, AND ARTICLES THEREOF, RUBBER, SYNTHETIC RUBBER, FACTICE, AND ARTICLES THEREOF

CHAPTER 39

ARTIFICIAL RESINS AND PLASTIC MATERIALS, CELLULOSE ESTERS AND ETHERS: ARTICLES THEREOF

> **39.01 Condensation, polycondensation and polyaddition products, whether or not modified or polymerised, and whether or not linear (for example, phenoplasts, aminoplasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones):**
>
> ***
>
> C. Other
>
> ***
>
> VI Silicones

With respect to silicones, the headnotes to Chapter 39 provide that articles classified under item 39.01 include only goods of a kind produced by chemical synthesis and responding to one of the following descriptions:

(a) Artificial plastics including artificial resins;

(b) Silicones;
(c) Resols, liquid polyisobutylene, and similar artificial polycondensation or polymerization products.

Further, the Headnotes to Chapter 39 state that products classified under heading 39.01 are to apply to materials in the following forms only:

(a) Liquid or pastes (including emulsions, dispersions and solutions);

(b) Blocks, lumps, powders (including molding powers), granules, flakes and similar bulk forms;

(c) Monofil of which any cross-sectional dimension exceeds 1 mm; seamless tubes, rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked;

(d) Plates, sheets, film, foil and strip (other than that classified in Heading No. 51.02 by the application of Note 4 to Chapter 51), whether or not printed or otherwise surface-worked, uncut or cut into rectangles but not further worked (even if, when so cut, they become articles ready for use);

(e) Waste and scrap.

Silicones are not classifiable as synthetic rubber because they are not cross-linked by vulcanization with sulphur. Under the Common Customs Tariff synthetic rubber articles are not provided for in Chapter 39 by virtue of Headnote 1(c). Synthetic rubber is defined in Headnote 4(a) of Chapter 40 as:

(a) Unsaturated synthetic substances which can be irreversibly transformed into non-thermoplastic substances by vulcanization with sulphur and which, when so vulcanized as well as may be (without the addition of any substances such as plasticisers, fillers, or reinforcing agents not necessary for the cross-linking), can produce substances which, at a temperature between -18 and 29° C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length.

Such substances include cis-polyisoprene (IR), polybutadiene (BR), polychlorobutadiene (CR), polybutadienestyrene (SBR), polychlorobutadieneacrylonitrile (NCR), polybutadiene-acrylonitrile (NBR) and butyl rubber (IIR);

(b) Thioplasts (TM); and

(c) Natural rubber modified by grafting or mixing with artificial plastic material, de-polymerized natural rubber, and mixtures of unsaturated synthetic substances with saturated synthetic high polymers, provided that all the above-mentioned products comply with the requirements concerning vulcanization, elongation and recovery in (a) above.

IV.

TARIFF CLASSIFICATION OF SILICONES UNDER THE TARIFF SCHEDULES OF THE UNITED STATES

Silicones are not specifically provided for by name in the Tariff Schedules and are classified under item 445.56, as "Synthetic plastics materials: Other" since they fall within the definition of "synthetic plastics materials" provided in headnote 2 of Schedule 4, Part 4A, TSUS. The present rate of duty is 1.1 cents per pound plus 8.9% *ad valorem*. This rate will be reduced in annual stages to 1 cent per pound plus 7.7% *ad valorem* in 1987. Thermosetting synthetic silicone resins are specifically provided for under Statistical Annotation 445.5660 of the Tariff Schedules.[5]

Certain silicones may be misclassified under the "rubber" provisions of Schedule 4, Part 4B, TSUS. A recently adopted Statistical Annotation 446.1533 of the Tariff Schedules mistakenly provides for silicone "synthetic rubber". To be a rubber a substance in certain specified crude forms must be capable of cross-linking by vulcanization with sulfur or other means and thereafter meet specific extensibility tests after cross-linking. Many silicones may be cross-linked by chemical means (other than vulcanization with sulfur) and meet the "stretch and return" tests. Despite meeting this one test for "rubber" such articles are nevertheless plastics and for tariff purposes they must remain classifiable under item 445.56. It was never the intent of Congress that silicones be treated as "synthetic rubber". The adoption of Statistical Annotation 446.1533 in Part 4B in January 1981 was clearly erroneous, and contrary to law in that it contravenes the legal requirement that statisical annotation may not expand the scope of the legal text. *See*, General Statistical Headnote 2(c) which provides that "statistical annotations are suboridinate to the provisions of the legal text and *cannot change their scope.*"

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[5] For tariff purposes, a thermosetting resin is defined in Headnote 2 of Subpart A Statistical Headnotes, Part 4, Schedule 4, TSUS, as:

> ...those materials which in their final state as finished articles are substantially infusible. Thermosetting resins are often liquids at some stage in their manufacturing or processing, and are cured by heat, catalysis, or other chemical means. After being fully cured, thermosets cannot be resoftened by heat.

V.

TARIFF CLASSIFICATION UNDER THE CONVERSION OF THE TARIFF SCHEDULES INTO THE HARMONIZED SYSTEM

In the proposed conversion of the Tariff Schedules into the Harmonized System silicones in primary forms are specifically provided for under Heading 3910.00 of Section VII of Chapter 39 as follows:

3910.00	Silicones in primary form.	
3910.00.10	Elastomeric	Free
	Other:	
3910.00.20	Dimethylsiloxane fluids	3.7%
3910.00.50	Other	2.2¢/Kg + 7.7%

Legal Note 6 defines the expression "primary forms" for purposes of Heading 3910.00 in almost identical language to that of Headnotes 3(a) and (b) of Chapter 39 of the provisions for the Common Customs Tariff. These forms are:

(a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;

(b) Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes, and similar bulk forms.

Further, additional U.S. Legal Note 1 defines the term "elastomeric" as a plastic material which after cross-linking can be stretched to a certain length and return to a certain percentage of its original length. Elastomeric plastics may contain fillers, extenders, segments and other chemicals which may or may not meet the stretch and return tests.

These provisions are slightly different than those in the Commission's first draft conversion (USITC Publication 1213, January 1983), which provided for silicones as follows:

3910.00	Silicones in primary form	
3910.00.10	Elastomeric...........	Free
3910.00.20	Resin.................	2.2¢/kg + 7.7%
3910.00.30	Other.................	3.7%

The stated reasons for the changes in language between the draft conversion and the conversion were expressed in a letter of the Commission dated August 15, 1983. (A copy of this letter is attached). The revision was allegedly "to reflect established and ongoing Customs practice". It was the further position of the Commission that when and if the Customs Service corrects its practices regarding silicones classification, Heading 3910 will be "adjusted accordingly"[6]. Clearly, the converted Tariff Schedules as proposed by the Commission would be outside of the Presidential guidelines to avoid changes in rates of duty on individual products.

Silicones cannot be classified as rubbers even if they can satisfy the extensibility tests set forth in Legal Note 4 of Chapter 40, which provides for "Rubber and Articles Thereof". In Legal Note 4 to the Chapter, the term "synthetic rubber" is defined in almost identical language to the definition of synthetic rubber in the Common Customs Tariff. This definition clearly excludes silicones because they are not vulcanized with sulphur. However, the effect of "Additional U.S. Legal Note 1" is to provide for "Elastomeric" silicones as if they were synthetic rubber substances, in derogation of law.

VI.
DISCUSSION

A. The Trading Partners of the United States Do Not Subdivide Silicones into Types

We believe that the Harmonized System should follow the language of the Common Customs Tariff for classification of silicones.

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[6] It is highly significant that the Commission takes a contrary position with respect to the definition of synthetic rubber in its gathering of trade statistics. In its recently released Summary of Trade and Tariff Information on rubber (USITC Publication 841, November 1983), the Commission does not describe silicones as synthetic rubber or as synthetic elastomer. The Commission states that butyl rubber, ethylene-propylene rubber, nitrile rubber, polybutadiene rubber, polychloroprene (neoprene) rubber, and styrene-butadiene (SBR) rubber account for 90% of United States production of synthetic elastomers, and it makes no mention of silicones.

The Common Customs Tariff specifically provides for silicones in primary form and does not differentiate between particular types of silicones despite the fact that the Explanatory Notes to the Brussels Tariff Nomenclature discuss various types of silicones in language almost identical to that of the Explanatory Notes to Heading 3910.00 of the Harmonized System. Although both Explanatory Notes mention numerous types and forms of silicones, including oils, greases, resins and elastomers, there exists no subdivision of Common Customs Tariff item 39.10 C. VI. With respect to the Harmonized System, other countries which follow the classification scheme of the Common Customs Tariff will not be obliged to create subdivisions for the different types of primary forms of silicones. It is highly unlikely that any of our trading partners will separately provide for elastomeric, dimethylsiloxane fluids or other silicones. Silicones will be correctly treated in unitary fashion as plastics (resins) in primary forms.

B. Silicones are not within the class of materials described as "Synthetic Rubber" in the legislative history of the Tariff Schedules

Silicones were developed in the United States during the second World War. Like synthetic rubber, silicones were not commercially produced when the Tariff Act of 1930 was written. For this reason, there was not specific provisions for either silicones or synthetic rubber in the 1930 Act.

In 1948 the former United States Tariff Commission (now the United States International Trade Commission) provided "Summaries of Tariff Information" for the use of Congress and the Executive Branch in connection with proposed multinational trade negotiations under the General Agreements on Tariff and Trade.

At this time "synthetic rubber" and "synthetic rubber articles" first entered the tariff nomenclature.[7] These provisions were subheadings of paragraph 1558 of the 1930 Act which provided for manufactured articles which were not enumerated elsewhere in the Act. In the Summaries of Tariff Information "synthetic rubber" was described in the following terms:

> There are two broad types of synthetic rubber, namely, (1) general-purpose rubbers, usually designated GR-S; and (2) special-purpose rubbers, such as butyl (BR-1), neoprene and various butadiene-acrylonitrile synthetic rubbers. GR-S is a term generally applied to the synthetic rubbers which are copolymers of butadiene and sytrene. Butyl (GR-1) is a copolymer of isobutylene and isoprene. Neoprene is a term applied to polymers and copololymers of the chemical chloroprene, which is made in turn from acetylene, sulphuric acid, and salt.

All the specified types of synthetic rubber are compounds with a hydrocarbon backbone. There is no indication that any substance of non-hydrocarbon skeletal composition could be considered to be "synthetic rubber".

In 1954 the Tariff Commission was directed to:

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[7] T.D. 51802, 82 Treas. Dec. 305 (effective January 1, 1948).

> (1) Establish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which have occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the markets in which they are sold.[8]

On February 7, 1958, the Tariff Commission published notice of hearings to be held on proposed "Schedule 4 - Chemicals and Related Products." Subsequently, the Tariff Commission published the monumental "Tariff Classification Study" ("TCS") of November 15, 1960, which is recongized as the definitive legislative history of the Tariff Schedules of the Untied States. As first published in 1958, Schedule 4 would have provided for benzenoid "synthetic rubbers (elastomers)" in Schedule 4, Part 1C (draft item 405.50).[9] Non-benzenoid "synthetic rubber" would have been classifiable in Part 4B of the Schedule (draft item 446.15).[10]

Between the first publication in 1958 and the issuance of the TCS, the Tariff Commission engaged in a lively discussion with Mr. Eugene R. Pickrell.[11] Although the subject of "synthetic rubber" was discussed at great length, "silicones" were never mentioned as "synthetic rubber". The only reference to silicones was as an elastomer in distinction from "synthetic rubber".[12] The latter was defined as:

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[8] Customs Simplification Act of 1954, Pub. L. 83-768 (September 1, 1954), Section 101(a)(1).

[9] TCS, Schedule 4, at 216.

[10] TCS, Schedule 4, at 247.

> "Rubber, Synthetic, (is the) name for any of several artificially produced substances which resemble natural rubber in essential chemical and physical properties, especially those produced by the polymerization of certain unsaturated hydrocarbons and cured after fabrication by vulcanizing." (Emphasis Added).[13]

It is clear both from the examples of synthetic rubber cited in the legislative history and from this definition that only polymers based on a hydrocarbon skeleton were considered to be "synthetic rubber" at the time of enactment of the Tariff Schedules. This is particularly clear since the Tariff Commission dropped the term "elastomers" from the Tariff Schedules and provided simply for "synthetic rubber" in Schedule 4, Part 4B, TSUS.[14]

The legislative history of the TSUS is supported in this respect by the authoritative, contemporary lexicon, Webster's Third New International Dictionary (1961). This authoritative source defines "synthetic rubber" as (p. 2321):

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[11] TCS, Schedule 4, at 401-435.

[12] TCS, Schedule 4, at 420, quoting Condensed Chemical Dictionary (5th Ed. 1956.)

[13] Id., quoting Universal Standard Encyclopedia (1954).

[14] TCS, Schedule 4, at 97.

> synthetic rubber n: any of various products as (GR-S, neoprene, butyl rubber, or nitrile rubber) that resemble natural rubber more or less closely esp. in physical properties and ability to be vulcanized, that are made usu. by polymerization of butadiene, isoprene, or similar unsaturated hydrocarbons or by copolymerization of such hydrocarbons with styrene, isobutylene, acrylonitrile, or other polymerizable compounds, and that have uses similar to those of nature rubber but are superior for some applications and inferior for others and are often used in combination with natural rubber : RUBBER 2b - compare ELASTOMER

It is clear from this definition that only hydrocarbon chain compounds were properly considered to be "synthetic rubber". The same source clearly indicates that "elastomer" is a broader term (p. 730):

> elastomer ***: an elastic rubberlike substance (as a synthetic rubber or a plastic having some of the physical properties of natural rubber).

Thus elastomers could be either "synthetic rubber" or certain plastics. We submit that silicones are such plastics and are not "synthetic rubber."[15]

---

[15] Webster's, supra, indicates that "silicone rubber" is "rubber made from silicone elastomers ****". There is no cross-reference from "silicone rubber" to synthetic rubber (p. 2118).

In summary, the legislative history of the Tariff Schedules indicates that silicones were not considered to be classifiable in Part 4B of Schedule 4. The deliberate use of the term "synthetic rubber" which definitionally refers to polymers based on a hydrocarbon chain leads to the conclusion that Congress intended silicones (which are based on a silicon-oxygen chain) to be excluded from the tariff category of "rubber".[16]

C. Silicones are more specifically provided for as "synthetic plastics materials" than as "rubber".

"Siloxanes, silicones and other organo-silicon resins***" are specifically provided for under the tariff term "synthetic plastics materials".[17] The intent to classify "silicones" as "synthetic plastics materials", rather than as "rubber", could hardly be more forcibly expressed.

Further, the United States Court of International Trade in V.G. Nahrgang Co. f/a/ Anthony Paglialungo v. United States, --CIT--, Slip. Op. 83-108 (October 26, 1983) held that the products specifically enumerated in Headnote 2, Part 4A of Schedule 4 are synthetic plastics materials. This Court held that Headnote 2 of Part 4A encompasses "the entire range of oroducts which are to be considered as synthetic plastics materials."

---

[16] The term "rubber" is defined in headnote 2 of Schedule 4, Part 4B. The term "synthetic rubber" is not defined and must be presumed to be consistent with the common meaning of "synthetic rubber", which excludes silicones.

[17] Headnote 2, Subpart A, Part 4, of Schedule 4, TSUS.

Even assuming that silicones are covered by both the "plastics" and "rubber" definitions, no statutory priority is given to "rubber" substances.[18] Accordingly, assuming arguendo that silicones are described in both subparts of Part 4 of Schedule 4, the normal rules of relative specificity must be applied to determine the appropriate classification.

General Interpretative Rule 10(c) of the General Headnotes and Rule of Interpretation of the Tariff Schedules provides that:

> (c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:
>
> (i) a superior heading cannot be enlarged by inferior headings indented under it but can be limited thereby;
>
> (ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

Applying subsection (i) and (ii) of this rule, the competing main superior headings are "synthetic plastics materials" (Part 4A) and "synthetic rubber" (Part 4B). Since the tariff definition of

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[18] Headnote 1 to Schedule 4, Part 4B gives that subpart priority over products described in Part 1 of Schedule 4. There is no similar priority granted over products such as silicones which are described in Part 4A of Schedule 4. Expressio unius est exclusio alterius.

"synthetic plastics materials" specifically enumerates silicones, it is obvious that silicones are most specifically described in this definition. Further, "synthetic plastics materials" are required to meet the following criteria:

> (a) They must be formed by the condensation, polymerization or copolymerization of organic chemicals;
>
> (b) They must contain as an essential ingredient an organic substance of high molecular weight;
>
> (c) They must be capable of being molded or shaped by flow; and
>
> (d) They must be capable of forming solid finished articles.[19]

In contrast, a "synthetic rubber" is required only to be "synthetic" and to contain a substance in solid form capable of cross-linking, stretching and recovery.[20] The restriction as to solid form precludes the classification of silicones as "rubbers". If this limitation were to be disregarded, it is clear that the requirements for classification as "synthetic plastics materials" are more difficult to satisfy than the requirements for "synthetic rubber."[21]

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[19] Note 17, supra.

[20] Headnote 2(a), Subpart B, Part 4, of Schedule 4.

D. Even if the competing provisions are deemed equally applicable, silicones must still be classified as "synthetic plastics materials".

We have already demonstrated that:

(1) silicones will not be "synthetic rubber" for purposes of the international Harmonized System;

(2) silicones are not "synthetic rubber" under the Tariff Schedules; and

(3) silicones are in any event most precisely described as "synthetic plastics materials" for tariff purposes.

For all of these reasons, the proposed draft should contain no duty-free provision for silicones of any description.

Even assuming arguendo that the provisions for "synthetic plastics materials" and for "synthetic rubber" are deemed equally applicable to silicones, classification of silicones as plastics must still prevail over classification as rubber as a matter of law. General Interpretative Rule 10(d) of the Tariff Schedules provides as follows:

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[21] It must be noted that since the 1980 amendment the tariff definition of rubber no longer requires that "rubber" per se be capable of either cross-linking or stretch and recovery. "Rubber" also includes products which cannot be cross-linked or stretched because of the presence of "fillers, extenders, pigments, or rubber-processing chemicals ***". The broad and undefined terms "fillers" and "extenders" serve to make the requirements for qualification as "rubber" among the least specific in the Tariff Schedules.

> (d) if two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest, and, should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules.

The "highest original statutory rate" for the competing provisions is set forth in "Column 2" under "Rates of Duty" as follows:

Item	Articles	[Column] 2
445.56	Synthetic plastics materials Other	33.5% ad val.
446.15	Synthetic rubber	20% ad val.

That statutory rate of duty for synthetic plastics is considerably greater than the rate of synthetic rubber. Although the statutory rate test is dispositive, it should also be noted that the plastics provision contains the description which first appears in the Tariff Schedules. There is no justification for classifying any silicones under the provision for "synthetic rubber".

E. Proposals

The TPSC should withdraw "Additional U.S. Legal Note 1" from Chapter 39 of the Harmonized System and eliminate all provisions for "elastomeric" polymers. It is overwhelmingly probable that all polymers which are properly considered to be "rubber" under the Tariff Schedules will continue to qualify as "synthetic rubber" by virtue of Legal Note 4 to Chapter 40 of the Harmonized System. Pursuant to Legal Note 2(g) to Chapter 39, any such substances are excluded from the purview of Chapter 39. The "Additional U.S. Legal Note" is almost the same as the international legal note and will lead to unnecessary confusion, uncertainty and administrative complication.

There is no justification for providing "elastomeric plastics" in Chapter 39 of the Harmonized System when virtually all truly "elastomeric" substances are excluded from that Chapter. In any event, there should be no provisions for elastomeric silicones, dimethylsiloxane fluid silicones or other silicones. All silicones are resins within the tariff definition and should be classifiable as such under a single provision, item 3910.00.00, and at a single rate, reflecting the rate applicable to plastics materials. The Commission's creation of three provisions for "elastomeric", "dimethylsiloxane fluid" and "other" silicones should not be enacted into law. In keeping within the Presidential guidelines, all silicones in Chapter 39 should be assessed with duty at the rate of 2.2 cents per kilogram plus 7.7% *ad valorem* (1987).

VII.
CONCLUSION

For the foregoing reasons, we urge that the TPSC consolidate the three proposed items into a single tariff provision, as follows:

Item	Article	Rate of Duty
3910.00.00	Silicones in primary forms	2.2¢/kg. + 7.7%

We would be pleased to discuss this proposal with any members of your staff. We would welcome the opportunity to supplement this presentation in the event you should desire further information concerning the views we have expressed.

Respectfully submitted,

Louis Schneider

Philip Yale Simons

FREEMAN, WASSERMAN & SCHNEIDER
90 John Street
New York, New York 10038
(212) 619-1770

Attorneys for
GENERAL ELECTRIC COMPANY

Of Counsel:
Louis Schneider
Philip Yale Simons

Dated: November 29, 1983

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

15 AUG 1983

Mr. Louis Schneider
Freeman, Wasserman & Schneider
90 John Street
New York, New York 10038

Dear Mr. Schneider:

Thank you for your submission of April 22, 1983, with regard to the conversion of the Tariff Schedules of the United States (TSUS) into the format of the Harmonized System (HS). In your comments on behalf of General Electric Company, you suggested that all silicones in heading 3910 should be given the same tariff treatment because there should be no distinction between the different physical and chemical forms of silicones.

As requested by the President, we have merely drafted heading 3910 of te TSUS/HS conversion to reflect established and ongoing Customs practice. At such time that Customs changes its practices regarding silicones classification, the proposed heading 3910 will be adjusted accordingly.

I have arranged for you to receive, under separate cover, a copy of the Commission's June 30, 1983, report to the President, which includes the revised draft tariff schedule. We expect that the Office of the United States Trade Representative, as part of the President's review of the Commission's report, will conduct further proceedings on the conversion later this year. The exact nature, date, and location of those proceedings is being announced in the Federal Register.

Please feel free to contact me if you have any further questions.

Sincerely,

Eugene A. Rosengarden
Director
Office of Tariff Affairs

FREEMAN, WASSERMAN & SC[illegible]
AUG 22 1983
RECEIVED

BEFORE THE

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter Of:

INVESTIGATION NO. 332-131

In Connection With The:

DRAFT CONVERSION OF THE TARIFF SCHEDULES TO THE FORMAT OF THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

CHAPTER 30
PLASTICS AND ARTICLES THEREOF

In Connection With Silicones
Covered By Heading 3910

Of Counsel:

Louis Schneider
Herbert Peter Larsen
Philip Yale Simons
Charles R. Alton

FREEMAN, WASSERMAN & SCHNEIDER
90 John Street
New York, New York 10038
(212) 619-1770

April 1983

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BEFORE THE

UNITED STATES INTERNATIONAL TRADE COMMISSION

INVESTIGATION NO. 332-131

I

INTRODUCTION

This memorandum is submitted on behalf of General Electric Company, Silicone Products Division, Waterford, New York 12188, a major United States producer of silicone products. Its purpose is to suggest simplification of the proposed classification format for silicones in Chapter 39 of the Draft Conversion of the Tariff Schedules of the United States ("TSUS") into the Nomenclature Structure of the Harmonized System (the "Harmonized System"). Specifically, we urge the Commission not to "break out" individual types of silicones (i.e., elastomeric, resins and other forms) under heading 3910. There is no basis for creating three provisions with greatly different rates of duty. A single provision for "silicones in primary forms", with the rate of duty now applicable to silicone resins, would be preferable to the proposed draft. It would preserve the proper rate schedule and allow domestic producers of these chemicals to compete on equal terms in the international marketplace.

II
BACKGROUND

The United States International Trade Commission (the "Commission") is presently preparing a new tariff classification system to replace the Tariff Schedules of the United States. The President has requested the Commission to draft proposed domestic legislation in connection with an effort by the Brussels-based Customs Cooperation Council to devise an international "Harmonized System" of nomenclature for articles of commerce. The Commission expects to present the complete proposal to the President on June 30, 1983, for subsequent enactment by Congress.

The Commission has published the tariff items in the draft conversion of the Tariff Schedules, showing proposed item numbers, tariff descriptions, and rates of duty (USITC Publication 1213). The Commission has invited written presentations in connection with the published item numbers and duty rates. This submission is presented in response to that invitation.

The ultimate goal of the international effort is to create a single worldwide system of merchandise classification for purposes of customs tariffs, government trade and transport regulations, and statistical reporting. There is an international target date of January 1, 1985, for worldwide acceptance of the new "Harmonized System" by means of international agreement.

It is expected that the provisions of the new United States "Tariff Schedules" will be identical to the provisions of the new international "Harmonized System" insofar as it is subdivided to the six-digit (or "subheading") level. All additional tariff distinctions are discretionary at the eight-digit level. The Commission is authorized to draft eight-digit "items" (as sub-indentations of each six-digit subheading) if such subdivisions are necessary to accomplish its purposes. In the present instance, the Commission has proposed to create three "items" which are not necessary. A single "item" clearly suffices to categorize all "silicones in primary forms." We propose to eliminate the unnecessary subdivision of heading 3910. All silicones are "resins" and should be classified as such. There is no need to provide separately for "elastomeric" and "other" silicones.

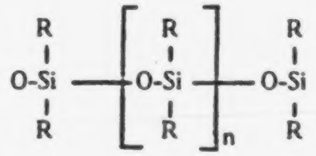
The Commission has published the Presidential Guidelines under which the present investigation is being conducted (46 F.R. 47897). The President has directed that:

> In converting the tariff schedules the Commission should avoid, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products. However, the U.S. tariff structure should be simplified to the extent possible without rate changes significant for U.S. industry, workers, or trade. Within these guidelines, the Commission should suggest modifications to the rate structure which, in the Commission's judgment, would alleviate administrative burdens on the Customs Service.

Our proposal is in complete accord with the guidelines of the President in that it would: (1) simplify the United States tariff structures; (2) avoid any significant rate change on imported merchandise; (3) cause no harm to United States industry, workers, or trade; and (4) alleviate administrative burdens on the Customs Service. Unless the Commission modifies the first draft of heading 3910, its enactment would needlessly complicate the tariff structure, create administrative burdens, and threaten harm to United States industry, workers, and trade.

III
DESCRIPTION OF SILICONES

Silicones are a large group of substituted siloxane[1] polymers possessing a repeating skeleton structure of alternating silicon and oxygen atoms. Various organic radicals are attached to the silicon atoms. Silicones can be structurally represented as:



$$\begin{array}{c} R \\ | \\ O\text{-}Si \\ | \\ R \end{array} - \left[\begin{array}{c} R \\ | \\ O\text{-}Si \\ | \\ R \end{array} \right]_n - \begin{array}{c} R \\ | \\ O\text{-}Si \\ | \\ R \end{array}$$

The symbol "R" represents an organic radical. All silicones are resins and differ only in the character of the "R" groups and the amount of branching of the silicon-oxygen skeleton.

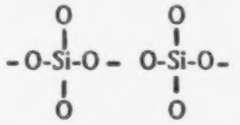
In essence, all silicones belong to the same chemical family. There is no chemical or commercial basis for distinguishing between particular polymers in primary form.

Our client produces over 2000 product grades of silicones. Silicones have hundreds of industrial applications, some of which are:

- As molding release agents for rubber, plastics, and metals (fluids and emulsions);

---

[1] Siloxanes are straight chain compounds, analogous to straight chain hydrocarbons, but consisting of a skeletal backbone of silicon atoms single bonded to oxygen atoms so that each silicon atom is combined with four oxygen atoms. The siloxane molecular structure is:



$$-O\text{-}\begin{array}{c} O \\ | \\ Si \\ | \\ O \end{array}\text{-}O - O\text{-}\begin{array}{c} O \\ | \\ Si \\ | \\ O \end{array}\text{-}O-$$

A number of organic radicals (e.g., methyl, phenyl, vinyl) may be linked to the side chain oxygen atoms.

- As antifoams in industrial operations such as food processing;
- As hydraulic or heat transfer fluids;
- As dielectric fluids (transformers) or compounds;
- As lubricating greases;
- As high-temperature, weather-durable, abrasion-resistant, or electrically insulating coatings;
- As release coatings for paper;
- As surfactants in generating polyurethane foams;
- As molded rubber parts for high/low temperature resistance or special electrical properties;
- As gloss-improving and friction-reducing agents in car and furniture polishes and many other household products;
- As volatile, non-staining, non-allergenic carriers for personal care products such as antiperspirants;
- As extruded electrical insulation for high temperature or safety cables;
- As sealants for glazing, weatherproofing, gasketing and other industrial applications, and for home use;
- As encapsulants for electronic devices or circuitry;
- As adhesives; and
- As elastomeric molds for plastic molding.

Despite the multiple purposes which specially designed silicone resins may serve, the silicones in primary form are all resins. The United States should join its trading partners in treating all of these resins as plastics in primary form.

IV

TARIFF CLASSIFICATION UNDER THE COMMON CUSTOMS TARIFF

Under the Common Customs Tariff, silicones are specifically provided for under item 39.01 C VI of Section VII, Chapter 39 which provides for:

SECTION VII

ARTIFICIAL RESINS AND PLASTIC MATERIALS, CELLULOSE ESTERS AND ETHERS, AND ARTICLES THEREOF: RUBBER, SYNTHETIC RUBBER, FACTICE, AND ARTICLES THEREOF

CHAPTER 39

ARTIFICIAL RESINS AND PLASTIC MATERIALS, CELLULOSE ESTERS AND ETHERS: ARTICLES THEREOF

39.01 Condensation, polycondensation and polyaddition products, whether or not modified or polymerised, and whether or not linear (for example, phenoplasts, aminoplasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones):

***

C. Other

***

VI Silicones

With respect to silicones, the headnotes to Chapter 39 provide that articles classified under item 39.01 include only goods of a kind produced by chemical synthesis and responding to one of the following descriptions:

(a) Artificial plastics including artificial resins;
(b) Silicones;
(c) Resols, liquid polyisobutylene, and similar artificial polycondensation or polymerisation products.

The Headnotes to Chapter 39 state that products classified under heading 39.01 be in any of the following forms:

(a) Liquid or pastes (including emulsions, dispersions and solutions);

(b) Blocks, lumps, powders (including moulding powders), granules, flakes and similar bulk forms;

(c) Monofil of which any cross-sectional dimension exceeds 1 mm; seamless tubes, rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked;

(d) Plates, sheets, film, foil and strip (other than that classified in heading No. 51.02 by the application of Note 4 to Chapter 51), whether or not printed or otherwise surface-worked, uncut or cut into rectangles but not further worked (even if, when so cut, they become articles ready for use);

(e) Waste and scrap.

Under the Common Customs Tariff, silicones are not classifiable as synthetic rubber because they are not cross-linked by vulcanization with sulphur. Chapter 39, Headnote 1(c) excludes synthetic rubber from Chapter 39, which is defined in Headnote 4 (a) of Chapter 40 as:

(a) Unsaturated synthetic substances which can be irreversibly transformed into non-thermoplastic substances by vulcanisation with sulphur and which, when so vulcanised as well as may be (without the addition of any substances such as plasticisers, fillers, or reinforcing agents not necessary for the cross-linking), can produce substances which, at a temperature between 18 and 29°C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length.

Such substances include cis-polyisoprene (IR), polybutadiene (BR), polychlorobutadiene (CR), polybutadienestyrene (SBR), polychlorobutadieneacrylonitrile (NCR), polybutadiene-acrylonitrile (NBR) and butyl rubber (IIR);

(b) Thioplasts (TM); and

(c) Natural rubber modified by grafting or mixing with artificial plastic material, de-polymerised natural rubber, and mixtures of unsaturated synthetic substances with saturated synthetic high polymers, provided that all the above-mentioned products comply with the requirements concerning vulcanisation, elongation and recovery in (a) above.

V

TARIFF CLASSIFICATION OF SILICONES UNDER THE TARIFF SCHEDULES

Silicones are not specifically provided for by name in the Tariff Schedules and may be classified under one of two provisions, Tariff Schedules item 429.95 or 445.56, depending upon the nature of the importation.

If the silicone is imported as a specific chemical compound, it would be classified under Tariff Schedule item 429.95 as: "Other organic compounds *** Other" and assessed with duty at the rate of 3.7% ad valorem in 1987. Statistical Annotation 429.9530 of the Tariff Schedules specifically provides for organo-silicon compounds.

If the silicone is not a single chemical compound, it will fall within the definition of "synthetic plastics materials" provided in headnote 2 of schedule 4, part 4A, and should be assessed with duty under Tariff Schedule item 445.56 as "Synthetic plastics materials: Other". The present rate of duty is 1.1 cents per pound plus 8.9% ad valorem. This rate will be reduced in annual stages to 1 cent per pound plus 7.7% ad valorem in 1987. As thermosetting synthetic plastic resins, silicones are specifically provided for under Statistical Annotation 445.5660 of the Tariff Schedules.

There is a possibility of misclassification of certain silicones under the "rubber" provisions of schedule 4, part 4B, TSUS. A recently adopted Statistical Annotation 446.1533 of the Tariff Schedules mistakenly provides for silicone synthetic rubber. To be a rubber, a substance in certain specified crude forms must be capable of cross-linking by vulcanization with sulfur or other means and thereafter meet specific extensibility tests after cross-linking. Many silicone resins may be cross-linked by chemical means (other than vulcanization with sulfur) and meet the "stretch and return" tests. Such merchandise is nevertheless plastics for tariff purposes and remains classifiable under item 445.56 which more specifically describes it. It was never the intent of Congress to describe silicones as "synthetic rubber" and the adoption of Statistical Annotation 446.1533 in part 4B was clearly erroneous.

VI

TARIFF CLASSIFICATION UNDER THE DRAFT CONVERSION OF THE TARIFF SCHEDULES INTO THE HARMONIZED SYSTEM

Silicones are specifically provided for under Heading 3901 of Section VII, Chapter 39 of the draft conversion of the Tariff Schedules into the Harmonized System, and under the chemical provisions of Chapter 29. In Chapter 39, silicones are proposed to be provided for as follows:

3910	Silicones in primary form.	
3910.00.10	Elastomeric................	Free
3910.00.20	Resin..........................	2.2¢/kg + 7.7%
3910.00.30	Other..........................	3.7%

Legal Note 6 defines the expression "primary forms" for purposes of Heading 3910 in almost identical language to that of Headnotes 3(a) and (b) of Chapter 39 of the provisions for the Common Customs Tariff. These forms are:

(a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;

(b) Blocks of irregular shape, lumps, powders (including molded powders), granules, flakes, and similar bulk forms.

If a silicone compound is a single chemical substance, it would be excluded from Chapter 39 by virtue of Legal Note 2(b) to that Chapter, and it would be classified within subchapter X of Chapter 29 which covers: "ORGANO-INORGANIC COMPOUNDS, HETEROCYCLIC COMPOUNDS, NUCLEIC ACIDS AND THEIR SALTS, AND SULFONAMIDES." Within this subchapter heading 2931 provides for "Other organo-inorganic compounds." Proposed item 2931.00.50 provides for "Organo-silicon compounds" under Statistical Suffix 2931.00.50.10. Merchandise so classified will be assessed with duty at the rate of 3.7% ad valorem.

For purposes of the Harmonized System, silicones are not classified as rubbers even if they can satisfy the extensibility tests set forth in Legal Note 4(a) of Chapter 40, which provides for "Rubber and Articles Thereof". In Legal Note 4 to that Chapter, the term synthetic rubber is defined in almost identical language to the definition of synthetic rubber in the Common Customs Tariff. This definition clearly excludes silicones because they are not vulcanized with sulphur.

Silicones would also be excluded from the rubber chapter of the draft proposal for the same reason. However, the unfortunate effect of "Additional U.S. Legal Note 1" is to provide for "Elastomeric" silicones as if they were synthetic rubber substances. Since silicones are not "synthetic rubber", under the Tariff Schedules, the proposed Additional U.S. Legal Note should not be adopted.

VII
DISCUSSION

A. The Trading Partners of the United States Do Not Subdivide Silicones into Types.

We believe that the draft conversion should follow the language of the Common Customs Tariff for classification of silicones.

The Common Customs Tariff specifically provides for silicones in primary form and does not differentiate between particular types of silicones despite the fact that the Explanatory Notes to the Brussels Tariff Nomenclature discuss various types of silicones in language almost identical to that of the Explanatory Notes to Heading 3910 of the Harmonized System. Although both Explanatory Notes mention numerous types and forms of silicones, including oils, greases, resins and elastomers, there exists no subdivision of Common Customs Tariff item 39.10 C. VI. With respect to the Harmonized System, other countries which follow the classification scheme of the Common Customs Tariff will not be obliged to create subdivisions for the different types of primary forms of silicones. It is highly unlikely that any of our trading partners will separately provide for "elastomeric" or "other" silicones. Silicones will be correctly treated in unitary fashion as plastics (resins) in primary forms.

B. Import Statistics Do Not Justify a Subdivision For The Different Forms of Silicones

Import statistics show that the quantity and value of silicone thermosetting resins provided for under Statisical Annotation 445.5660 are insignificant when compared to the total quantity of imported thermosetting resins provided for under Statistical Annotations 445.5645, 445.5650, 445.5660 and 445.5690. This data is shown on the following table. We also show analogous figures limited to imports of silicones from the European Economic Community ("EEC"), the major exporter of these resins to the United States (81% of total imports in 1981 and over 98% in 1982). The data shows that silicone resin imports represent an insignificant amount of the total thermosetting resin importations:

	Imports into the United States of Silicone Resins from all Sources as a Percentage of Total Imports of Thermosetting Resins		Imports into the United States of Silicone Resins from the EEC as a percentage of Total Imports of Thermosetting Resins	
	Quantity	Value	Quantity	Value
1981	4.4%	11.5%	3.6%	7.5%
1982	6.7%	10.1%	6.6%	9.7%

Import statistics show that the quantity and value of silicones misclassified under Statistical Annotation 446.1533 are de minimis when compared to the total quantity of synthetic "rubbers" classified under Tariff Schedule item 446.15. This data is shown in the following table. We also show comparative figures for EEC merchandise. This source accounts for over 96% of total imports in 1981 and over 81% in 1982, based on quantity and 98.8% of the total imports in 1981 and over 91% in 1982, based on value. Imports of so-called silicone "rubbers" represent a de minimis amount when compared to total importations of synthetic rubber:

	Imports into the United States of Silicone "Rubber" from all Sources as a Percentage of Total Imports of Synthetic Rubber		Imports into the United States of Silicone "Rubber" from the EEC as Percentage of Total Imports of Synthetic Rubber	
	Quantity	Value	Quantity	Value
1981	0.5%	1.7%	0.5%	1.5%
1982	0.9%	1.8%	0.7%	1.7%

The fact that imports of silicone are insignificant when compared to the total amount of synthetic thermosetting resins and synthetic rubbers imports is justification for providing for all silicones under a single tariff description.

C. Silicones are not within the class of materials described as "Synthetic Rubber" in the legislative history of the Tariff Schedules

Silicones were developed in the United States during the second World War. Like synthetic rubber, silicones were not commercially produced when the Tariff Act of 1930 was written. For this reasons, there was no specific provision for either silicones or synthetic rubber in the 1930 Act.

In 1948 the former United States Tariff Commission (now the United States International Trade Commission) provided "Summaries of Tariff Information" for the use of Congress and the Executive Branch in connection with proposed multinational trade negotiations under the General Agreements on Tariff and Trade.

At this time "synthetic rubber" and "synthetic rubber articles" first entered the tariff nomenclature.* These provisions were subheadings of paragraph 1558 of the 1930 Act which provided for manufactured articles which were not enumerated elsewhere in the Act. In the Summaries of Tariff Information "synthetic rubber" was described in the following terms:

---

* T.D. 51802, 82 Treas. Dec. 305 (effective January 1, 1948).

> There are two broad types of synthetic rubber, namely, (1) general-purpose rubbers, usually designated GR-S; and (2) special-purpose rubbers, such as butyl (BR-1), neoprene and various butadiene-acrylonitrile synthetic rubbers. GR-S is a term generally applied to the synthetic rubbers which are copolymers of butadiene and sytrene. Butyl (GR-I) is a copolymer of isobutylene and isoprene. Neoprene is a term applied to polymers and copolyolymers of the chemical chloroprene, which is made in turn from acetyl ene, sulphuric acid, and salt.

All of the specified types of synthetic rubber are compounds with a hydrocarbon backbone. There is no indication that any substance of non-hydrocarbon skeletal composition could be considered to be "synthetic rubber".

In 1954 the Tariff Commission was directed to:

> (1) Establish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which have occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the markets in which they are sold.*

On February 7, 1958, the Tariff Commission published notice of hearings to be held on proposed "Schedule 4 - Chemicals and Related Products."

---

* Customs Simplification Act of 1954, Pub. L. 83-768 (September 1, 1954), Section 101(a) (1).

Subsequently, the Tariff Commission published the monumental "Tariff Classification Study" ("TCS") of November 15, 1960, which is recognized as the definitive legislative history of the Tariff Schedules of the United States. As first published in 1958, schedule 4 would have provided for benzenoid "synthetic rubbers (elastomers)" in schedule 4, part 1C (draft item 405.50).* Non-benzenoid "synthetic rubber" would have been classifiable in part 4B of the schedule (draft item 446.15).**

Between the first publication in 1958 and the issuance of the TCS, the Tariff Commission engaged in a lively discussion with Mr. Eugene R. Pickrell.*** Although the subject of "synthetic rubber" was discussed at great length, "silicones" were hardly mentioned. The only reference to silicone describes it as an elastomer and not as a "synthetic rubber".**** In contrast, "synthetic rubber" was defined as:

> "Rubber, Synthetic, (is the) name for any of several artificially produced substances which resemble natural rubber in essential chemical and physical properties, especially those produced by the polymerization of certain unsaturated hydrocarbons and cured after fabrication by vulcanizing." +

It is clear both from the examples of synthetic rubber cited in the legislative history and from this definition that only polymers based on hydrocarbon skeletons were considered to be "synthetic rubber" at the time of enactment of the Tariff Schedules.

---

* TCS, Schedule 4, at 216.

** TCS, Schedule 4 at 247.

*** TCS, Schedule 4 at 401-435.

**** TCS, Schedule 4 at 420, quoting Condensed Chemical Dictionary (5th. Ed. 1956.)

+ Id., quoting Universal Standard Encyclopedia (1954).

Pursuant to this discussion, the Tariff Commission dropped the term "elastomers" from the Tariff Schedules and provided simply for "synthetic rubber" in Schedule 4, part 4B, TSUS.*** Thus the term "elastomers" (which could have been construed to refer to silicones) was not adopted into the nomenclature of the TSUS. The term which was adopted, "synthetic rubber," was never used in the TCS as a referent for silicones. There is every indication that only elastomers based on a hydrocarbon backbone would be considered to constitute synthetic rubbers because every example of a synthetic rubber cited in the TCS is based on a hydrocarbon skeletal chain.

The legislative history of the TSUS is buttressed in this respect by the authoritative, contemporary lexicon, Webster's Third New International Dictionary (1961). This authoritative source defines "synthetic rubber" as (p.2321):

> synthetic rubber n: any of various products as (GR-S, neoprene, butyl rubber, or nitrile rubber) that resemble natural rubber more or less closely esp. in physical properties and ability to be vulcanized, that are made usu. by polymerization of butadiene, isoprene, or similar unsaturated hydrocarbons or by copolymerization of such hydrocarbons with styrene, isobutylene, acrylonitrile, or other polymerizable compounds, and that have uses similar to those of nature rubber but are superior for some applications and inferior for others and are often used in combination with natural rubber : RUBBER 2b - compare ELASTOMER

** Id quoting Universal Standard Encyclopedia.

*** TCS, Schedule 4 at 97.

It is clear from this definition that only hydrocarbon chain compounds were properly considered to be "synthetic rubber". The same source clearly indicates that "elastomer" is a broader term (p.730):

> elastomer ***: an elastic rubberlike substance (as a synthetic rubber or a plastic having some of the physical properties of natural rubber).

Thus elastomers could be either "synthetic rubber" or certain plastics. We submit that silicones are such plastics and are not "synthetic rubber."*

As will be shown, the tariff definition of "rubber" implicitly excludes silicones in its description of the forms in which crude rubber is commercially produced. The Tariff Commission did not describe the chemical properties of "rubber" but noted that any definition of synthetic rubber would "necessarily involve classification nuances which can be resolved only by arbitrary distinctions." The Commission pointed out that the relevant definition was directed only to the physical properties of "rubber".**

In summary, the legislative history of the Tariff Schedules indicates that silicones were not considered to be classifiable in part 4B of Schedule 4. The deliberate use of the term "synthetic rubber" which definitionally refers to hydrocarbon polymers must lead to the conclusion that Congress intended silicones to be excluded from the tariff category of "rubber".***

---

* Webster's, supra, indicates that "silicone rubber" is "rubber made from silicone elastomers ***". There is no cross-reference from "silicone rubber" to synthetic rubber (p. 2118).

** TCS, Schedule 4 at 100.

*** The term "rubber" is defined in headnote 2 to schedule 4, part 4B. The term "synthetic rubber" is not defined and must be presumed to be consistent with the common meaning of "synthetic rubber", which excludes silicones.

D. Silicones do not meet the "basic crude form" test of the Tariff Schedules definition of "rubber".

The present tariff definition of "rubber" in headnote 2 to schedule 4, part 4B of the Tariff Schedules provides:

> 2. (a) For the purposes of the tariff schedule, the term "rubber" means a substance, whether natural or synthetic, in bale, crumb, powder, latex, or other crude form, that--
>
> (i) can be vulcanized or otherwise cross-linked, and
>
> (ii) after cross-linking can be stretched at 68°F. to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within 5 minutes to less than 150 percent of its original length.
>
> (b) For purposes of the Tariff Schedules other than schedule 4, the term "rubber" also means any substance described in subdivision (a) that also contains fillers, extenders, pigments, or rubber-processing chemicals, whether or not such substance, after the addition of such fillers, extenders, pigments, or chemicals, can meet the tests specified in clauses (i) and (ii) of subdivision (a).

This definition was enacted by Section 13 of Public Law 96-467, 94 Stat. 2225, effective October 17, 1980. This new definition restates the key terms of the original definition which have been in effect since the inception of the Tariff Schedules:

> "rubber" means a substance, whether natural or synthetic, in bale, crumb, powder, latex, or other crude form***

Silicones are not shipped in international trade in any of the forms described in this headnote. Further, except for "latex" (a term that can only apply to natural rubber), all of the forms mentioned are solids. Silicones in primary form are always in liquid condition. Thus, it is implicitly clear that Congress has never enacted or ratified a tariff definition of "rubber" which would include silicones.

E. Even if silicones are deemed to meet the Tariff Schedules definition of "rubber", they are more specifically provided for as "synthetic plastic materials".

In contrast to the tariff definition of "rubber", the tariff definition of "synthetic plastics materials" in headnote 2 to schedule 4, part 4A, provides that:

> These synthetic plastics materials may be in solid, semi-solid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions and other basic crude forms not further processed. [Emphasis added].

Thus, it is clear that Congress provided for liquid polymers to be classified as plastics in all instances.

Further, the tariff term "synthetic plastics materials" specifically includes "siloxanes, silicones and other organo-silicon resins ***". The intent to classify "silicones" as "synthetic plastics materials", rather than as "rubber" could hardly be more forcibly expressed.

Even assuming that silicones are covered by both the "plastics" and "rubber" definitions, no statutory priority is given to "rubber" substances*. Accordingly if we assume that silicones are described both subparts of schedule 4, part 4, the normal rules of relative specificity must be applied to determine the appropriate classification.

General Interpretative Rule 10(c) provides that:

> (c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:
>
> (i) a superior heading cannot be enlarged by inferior headings indented under it but can be limited thereby;
> (ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

Applying subsection (i) and (ii) of this rule, the competing main superior headings are "synthetic plastics materials" (part 4A) and "synthetic rubber" (part 4B). Since the tariff definition of "synthetic plastics materials" specifically enumerates silicones, it is obvious that silicones are most specifically described in this definition. Further, "synthetic plastics materials" are required to meet the following criteria:

> (1) They must be formed by the condensation, polymerization or copolymerization of organic chemicals;
>
> (2) They must contain as an essential ingredient an organic substance of high molecular weight;
>
> (3) They must be capable of being molded or shaped by flow; and
>
> (4) They must be capable of forming solid finished articles.

---

* Headnote 1 to schedule 4, part 4B gives that subpart priority over products described in part 1 of schedule 4. There is no similar priority granted over products such as silicones which are described in part 4A of schedule 4. Expressio unius est exclusio alterius.

In contrast a "synthetic rubber" is required only to be "synthetic" and to contain a substance in solid form capable of cross-linking, stretching and recovery. The restriction as to solid physical form should preclude the classification of silicones as "rubbers". If this limitation were to be disregarded, it is clear that the requirements for classification as "synthetic plastics materials" are more difficult to satisfy than the requirements for "synthetic rubber."*

F. Even if the competing provisions are deemed equally applicable, silicones must still be classified as "synthetic plastics materials".

We have already demonstrated that:

(1) silicones will not be "synthetic rubber" for purposes of the international Harmonized System;

(2) silicones are not "synthetic rubber" under the Tariff Schedules; and

(3) silicones are in any event most precisely described as "synthetic plastics materials."

For all of these reasons, the proposed draft should contain no duty-free provision for silicones of any description.

---

* It must be noted that since the 1980 amendment the tariff definition of rubber no longer requires that "rubber" per se be capable of either cross-linking or stretch and recovery. "Rubber" also includes products which cannot be cross-linked or stretched because of the presence of "fillers, extenders, pigments, or rubber-processing chemicals ***". The broad and undefined terms "fillers" and "extenders" serve to make the requirements for qualification as "rubber" among the least specific in the Tariff Schedules.

Even assuming arguendo that the provisions for "synthetic plastics materials" and for "synthetic rubber" are deemed equally applicable to silicones. classification of silicones as plastics must still prevail over classification as rubber as a matter of law.

General Interpretative Rule 10(d) of the Tariff Schedules provides as follows:

> (d) if two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest. and. should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules.

The "highest original statutory rate" for the competing provisions is set forth in "Column 2" under "Rates of Duty" as follows"

Item	Articles	[Column] 2
445.56	Synthetic plastics materials Other......	33.5% ad val.
446.15	Synthetic rubber	20% ad val.

The statutory rate of duty for plastics is more than 50 percent higher than the rate for synthetic rubber. Although the statutory rate test is dispositive, it should also be noted that the plastics provision contains the description which first appears in the Tariff Schedules. There is no justification for classifying any silicones under the provision for "synthetic rubber".

G. Proposals

The Commission should seriously consider withdrawing proposed "Additional U.S. Legal Note 1" from Chapter 39 of the proposed Tariff Schedules and eliminating all provisions for "elastomeric" polymers. It is overwhelmingly probable that all polymers which are properly considered to be "rubber" under the TSUS will continue to qualify as "synthetic rubber" by virtue of Legal Note 4 to Chapter 40 of the draft. Pursuant to Legal Note 2(g) to Chapter 39, any such substances are excluded from the purview of Chapter 39. The "additional U.S. legal note" is almost the same as the international legal note and will lead to unnecessary confusion, uncertainty and administrative complication.

There is no justification for providing "elastomeric plastics" in Chapter 39 when virtually all truly "elastomeric" substances are excluded from that Chapter. In any event, there should be no provision for "elastomeric" silicones. All silicones are resins and should be classifiable as such in a single item 3910.00.00. The small number of silicones which may be considered to be single chemical compounds are specially provided for in Chapter 29. The "first draft" items proposed to be created for "elastomeric" and "other" silicones should be abolished. All silicones in Chapter 39 should be assessed with duty at the rate of 2.2 cents per kilogram plus 7.7% ad valorem (1987).

VIII

CONCLUSION

For the foregoing reasons, we urge that the Commission consolidate the three proposed items under heading 3910 into a single tariff provision as follows:

Item	Article	Rate of duty
3910.00.00	Silicones in primary forms.	2.2¢/kg. + 7.7%

We would be pleased to discuss this proposal with any members of your staff. We would welcome the opportunity to supplement this presentation in the event you should desire further information concerning the views we have expressed.

Respectfully submitted,

Louis Schneider

FREEMAN, WASSERMAN & SCHNEIDER
90 John Street
New York, New York 10038
(212) 619-1770

Attorneys for GENERAL ELECTRIC COMPANY

Of Counsel:
Louis Schneider
H. Peter Larsen
Philip Yale Simons
Charles R. Alton

Dated: April 22, 1983

Mobay

Mobay
Chemical Corporation

May 16, 1984

Penn Lincoln Parkway West
Pittsburgh, PA 15205
Telephone: 412/777-2000

U. S. House of Representatives
Committee on Ways and Means
Room 1102 Longworth House Office Bldg.
Washington, DC 20515
Attention: Chief Counsel, John J. Salmon

Subject: Miscellaneous Tariff Bill HR 5422

Dear Mr. Salmon,

The following comments submitted by Mobay Chemical Corporation are in opposition to Miscellaneous Tariff Bill HR 5422 introduced by Congressman Albosta on April 11, 1984 in the House of Representatives.

We take issue with this bill as it essentially proposes a single duty rate (1.1¢/lb. + 8.6%) for Silicone Products in all forms. This change to the Tariff Schedule of the United States (TSUS) would impact millions of pounds of imported products and would benefit only the special interest group behind the initiating of the bill. Mobay Chemical Corporation is one of the largest importers of Silicone Products in the United States. Passage of this bill would create a significant negative impact on our business.

Under the TSUS as it is today, reflecting historical Customs Service administrative practice, Silicone Products are classified under four (4) different tariff numbers. Each number carries a certain duty rate. Silicone Resins are classified under TSUS 445.5660 at 1.1¢/lb. + 8.6% as Synthetic Plastic Materials: Other; Thermosetting Resins, Silicone Resins. Silicone Elastomers (Rubbers) are classified under TSUS 446.1533 and TSUS 446.1580 at 1.1% as Synthetic Rubber, Silicone. Silicone Fluids are classified under TSUS 429.9530 at 4.2% as Other Organic Compounds: Organo Silicone Compounds. Silicone Sealants are classified under TSUS 474.6200 also at 4.2% as Putty and Similar Caulking or Glazing Products: Other. We feel that the Customs Service has acted appropriately in their classification decisions. They recognize the obvious differences between the various types of Silicone Products. These separate classifications and duty rates should be retained without change.

Writer's Direct Dial Number

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HR 5422 proposed an amendment to Part 4 of Schedule 4 of the TSUS (19 U.S.C. 1202), Subpart A, Headnote 2. The amendment is basically proposed in Lines 6 through 9 of the bill which are restated below:

> "(ii) includes silicones in all forms (including fluids, resins, elastomers, sealants, adhesives, and copolymers) whether or not such materials are solid in the finished articles."

This amendment would create one duty rate for all forms of Silicones and should be rejected. This rejection would eliminate the need for insertion of TSUS 445.55 as proposed in the bill. The current number TSUS 445.5690 reads as Silicone Resins and covers classification of the resins. It would also assure Silicone Products currently classified under TSUS 429.9530 and 474.6200 would remain unchanged, classification and duty rate wise.

The proposal that TSUS 446.15 be eliminated and replaced by TSUS 446.16 (Silicone) at 1.1¢/lb. + 8.6% and TSUS 446.18 (Other) at 1.1% should also be rejected. TSUS 446.15 is the classification for Synthetic Rubber and under this classification are listed in excess of 10 different types of Synthetic Rubber Products, one of which is Silicone. As long as the Silicone Products meet the requirements to be classified a rubber as listed in the Headnotes under Part 4 of Schedule 4, Subpart B they should be afforded the same duty rate given to other Synthetic Rubber Products listed under TSUS 446.15 which is 1.1% in 1984 and duty free by 1987.

We would like to introduce additional information to support our opposition to this bill. This information we feel you will find most interesting and informative is attached. It is a submission by Mobay Chemical Corporation to the Office of the United States Trade Representative Trade Policy Staff Committee on the Conversion of the Tariff Schedules of the United States (USTR) annotated into the Nomenclature Structure of the Harmonized System. The submission deals with the same subject of a single classification and duty rate for Silicone Products only it does not involve todays Tariff Schedule. It involves instead the Harmonized System of classification, scheduled for implementation by the United States in 1987 if legislation is passed to allow its replacement of the TSUS.

In the event you are unfamiliar with the Harmonized System it is a conversion performed by the International Trade Commission and submitted to the President in report form in the summer of 1983. We realize Bill HR 5422 deals with todays tariff system but feel the arguments presented in our brief to the USTR are appropriate and support our arguments for rejection of this bill. Also provided in this submission are chemical examples supporting the need for different classifications and duty rates on the various Silicone Products.

In summary, we would like to state that without question this bill should be rejected. Its presence in any Omnibus Bill would surely jeopardize passage of that bill because of the opposition it would face in both the House and Senate. Should you require specific or additional information please feel free to contact the undersigned.

Thank you for the opportunity to submit these comments.

D. J. Oehl
Product Manager
Silicones and Acids

S. L. Sarniak
Import Supervisor

DJO:SLS:smk

cc: P. G. Gemeinhardt

98TH CONGRESS
2D SESSION

H. R. 5422

Relating to the tariff classifications of certain silicone resins and materials.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 1984

Mr. ALBOSTA introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

Relating to the tariff classifications of certain silicone resins and materials.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part 4 of schedule 4 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by amending subpart A—

(A) by amending headnote 2 to read as follows:

"2. (a) The term 'synthetic plastics materials' in this subpart—

MAY 11 '84

"(i) embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added; and

"(ii) includes silicones in all forms (including fluids, resins, elastomers, sealants, adhesives, and copolymers) whether or not such materials are solid in the finished articles.

"(b) The products referred to in (a)(i) and (ii) contain as an essential ingredient an organic substance of high molecular weight; are capable, at some stage during processing into finished articles, of being molded or shaped by flow; and, except as provided in (a)(ii) of this headnote, are solid in the finished article. The term includes, but is not limited to, such products derived from esters of acrylic or methacrylic acid, vinyl acetate, vinyl chloride resins, polyvinyl alcohol, acetals, butyral, formal resins, polyvinyl ether and ester resins, and polyvinylidene chloride resins, urea and amino resins; polyethylene, polypropylene, and other polyalkene resins; siloxanes, silicones, and other organo-silicon resins; alkyd, acrylonitrile, alyl, and formaldehyde resins, and cellulosic plastics materials. These synthetic plastics materials may be in solid, semi-solid, or liquid condition such as flakes, powers, pellets, granules, solutions, emulsions, and other basic crude forms not further processed."; and

(B) by inserting after item 445.54 the following new item:

"	445.55	Silicone resins and materials	1.1¢ per lb. + 8.6% ad val.	1¢ per lb. + 7.7% ad val.	33.5% ad val.	"; and

(2) by striking out item 446.15 and inserting in lieu thereof the following:

"		Synthetic rubber:				
	446.16	Silicone	1.1¢ per lb. + 8.6% ad val.	1¢ per lb. + 7.7% ad val.	33.5% ad val.	
	446.18	Other	1.1% ad val.	Free	20% ad val.	".

(b) The rate of duty in column numbered 1 for item 446.18 (as added by subsection (a)(2)) shall be subject to all staged rate reductions for item 446.15 that were proclaimed by the President before the date of the enactment of this Act.

SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act.

BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE

In the Matter of the

CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED INTO THE NOMENCLATURE STRUCTURE OF THE HARMONIZED SYSTEM

CHAPTER 39

PLASTICS AND ARTICLES THEREOF

Headings 3910.00.10, 3910.00.20, and 3910.00.50

SHAW and STEDINA
350 Madison Avenue
New York, N.Y. 10017
(212) 682-2233

Attorneys for
MOBAY CHEMICAL CORPORATION

February 29, 1984

COPY

BEFORE THE OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE

We submit these remarks on behalf of Mobay Chemical Corporation, Pittsburgh, Pennsylvania (hereinafter Mobay), in response to certain presentations of General Electric Company, Silicone Division, and Dow Corning Corporation, filed in November, 1983. Those presentations urged the TPSC to consolidate in a single provision, and to provide therein for classification of all "silicones in primary form" (whether rubber, fluids, or resins), under Harmonized System Heading 3910.00.00 with duty at 2.2¢/kg. plus 7.7%,[1] rather than to affirm the International Trade Commission's proposed conversions for those products in its June 30, 1983 report to the President. The ITC conversions retained the separate classifications and duty-rates provided in the TSUS for those articles,[2] i.e., rubbers as elastomers in HS 3910.00.10, free; fluids as dimethylsiloxane fluids in HS 3910.00.20, at 3.7%; and resins as other than dimethylsiloxane fluids and elastomeric silicones in primary form, other, in HS 3910.00.50, at 2.2¢/kg. plus 7.7%.

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[1] References to duty-rates herein correspond to 1987 staged rates.

[2] Rubbers are presently classified under the TSUS in item 466.15 as "synthetic rubber"; fluids in TSUS item 429.95 as "other organic compounds"; and resins in TSUS 445.56 as "other synthetic plastics materials."

We strongly oppose the special interest efforts of General Electric Company and Dow Corning Corporation, represented by their November, 1983 submissions, to subtly legislate changes to the present TSUS classifications and duty-rates for silicone rubbers and fluids. Those efforts conflict with Presidential guidelines for this investigation and, as well, are inconsistent with Congressional intention and long standing administrative classification practice to provide separately for those distinct and separate articles of trade. The June 30, 1983 ITC report to the President recognized the distinctions and preserved the historical integrity of the TSUS as it has been administered by the Customs Service. That integrity ought not be perverted here.

Presidential Guidelines

The guidelines under which the ITC was directed to conduct its investigation and to issue its report are clear:

> In converting the tariff schedules the Commission should avoid, to the extent practicable and consistent with sound nomenclature principles, changes in rates of duty on individual products. However, the U.S. tariff structure should be simplified to the extent possible without rate changes significant for U.S. industry, workers, or trade.

Despite assurances from the domestic producer interests that adoption of their proposed single classification and duty-rate for all silicones would "avoid any significant rate change on imported merchandise," their projected

2.2¢/kg. plus 7.7% rate would represent an indeterminate increase on rubbers, which would otherwise be free, and more than a 100% increase on fluids, up from 3.7%. Of course, the impact on Mobay would be substantial as rubbers comprise the largest volume of silicones imported, fluids are next, and resins are the least.

Futhermore, to suggest that a single classification and duty-rate for all silicones "would simplify the United States tariff structure," as an appropriate justification for its adoption, is a gross oversimplification. Under that same theory, why not convert all of Schedule 4 into a single category--"Chemicals and Related Products" at a single rate? That would really simplify the U.S. tariff structure--not to mention the administrative burdens that would be alleviated for the Customs Service. The charge, therefore, that unless the TPSC modify the HS subdivisions into a single heading, the ITC's conversion would needlessly complicate the tariff structure, create administrative burdens, and threaten harm to the U.S. indiustry workers, and trade, is a hollow one. The ITC conversion presents no new complications to the tariff structure, no new administrative burdens. All that the ITC conversion does is assign new headings to current TSUS items. Classification of articles included in each remains the same as under the TSUS. So do their duty-rates.

The caution in the Presidential gruidelines that simplification of the tariff structure should be done without rate changes significant for U.S. industry, workers, or trade is also misused by the domestic producer interests as support for their position. Actually, it should be read as a caution to the ITC not to lower duty-rates on imports in the interest of simplification when such a lowering of rates would adversely impact U.S. industry, workers, or trade. If definately does not justify increasing duty-rates in conversion to the Harmonized System under the guise that such action would not cause harm to domestic producer interests. Under that logic, to prohibit such imports altogether would cause even less harm to those same special interest proponents.

Rubbers

The "Common Customs Tariff" is not the law of the United States. Therefore, reference to it by the domestic producer interests to support their position of incorrect classification under the TSUS is not valid. There is no requirement in the TSUS that silicones, in order to be classified as "synthetic rubber," be "cross-linked by vulcanization with sulfer." In fact, TSUS Schedule 4, Part 4B, Headnote 2(a) specifically provides that the term "rubber" includes "a substance, whether natural or synthetic...that

(i) can be vulcanized or otherwise cross-linked, and

> (ii) after cross-linking can be stretched at 68°F. to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within 5 minutes to less than 150 percent of its original length.

Thus, silicone rubbers that may be cross-linked using methods other than "vulcanization with sulfer" and meet the extensibility test are required to be classified under the TSUS in item 446.15 as synthetic rubber. That is the legislative prescription for classification of this merchandise. The Customs Service's long-standing administrative practice of classifying silicone rubbers under that provision reinforces its presumption of correctness.

Silicone rubber is nothing more than synthetic rubber that is vulcanized, cross-linked, or cured, by chemical means. If it, as well, meets the Schedule 4, Part 4B, Headnote test for extensibility, it must be classified as such under the Tariff Schedules. The adoption of Statistical Annotation 446.15(33) in 1981 did not expand, as is suggested, the scope of the legal test for that classification. It merely broke out a statistical subclassification, for reporting purposes only, that recognized the Customs Service administrative practice to classify these articles as synthetic rubbers within item 446.15. If that result was not the result intended by Congress in providing for silicone rubbers, why did it not rewrite the TSUS Headnotes to plastics provisions. The current harmonization exercise must not, therefore, now be used to thwart that historical Congressional purpose.

What the domestic producer interests seek to do here is to set up the "Common Customs Tariff," classification and duty-rate wise, as authority for what the U.S. tariff structure, in their mind, ought to be. Unfortunately for them, that argument is not a valid one. How other countries classify their imports, and the rates they assign to them, are all immaterial for our purposes here. The TSUS, as administered by the United States Customs Service, is the law of the land and it will remain so until it is changed by Congress.

Fluids

Similarly, silicone fluids have been routinely classified by Customs in TSUS item 429.95 as "other organic compounds" (legal language), statistical subclassification 30, "organo-silicon compounds" (not legal language). The silicone fluids are, without question, organic compounds. We agree, however, that the practice of classifying them, for statistical reporting purposes, as "organo-silicon compounds" is questionable. They would, perhaps, be more correctly classified under statistical subclassification 90 as organic chemical compounds "other" than those named. We submit, though, that the point is unimportant from a conversion standpoint. The statistical subclassifications, and their modifying language, are merely for reporting purposes. The proposed conversion for these organic silicone fluid compounds as dimethylsiloxane fluids simply reflects their present Customs treatment as "other organic compounds" under the TSUS, not whether or not they are, actually, "organo-silicon compounds." The new provision for dimethylsiloxane fluids, then, corrects what may be an oversight in the statistical portion of the TSUS, but it in no circumstance changes the legal classification or reduces the duty on the imported product. The proposed 1987 staged rate of 3.7% is the same. In fact, some of tbe silicone fluids, now classified in item 429.95, which are not dimethylsiloxanes, will be reclassified into the basket category of HS 3910.00.50 and the duty thereon increased by more than 100%.

Resins

Silicone resins, now classified in TSUS 445.56 as "synthetic plastics materials, other," statistical subclassification 90, "silicone resins," would fall into HS 3910.00.50, the provision for silicones in primary forms, other than elastomeric, and other than dimethylsiloxane fluids. The 1987 staged rate, 2.2¢/kg. plus 7.7%, carries forward the present rate under which these silicone resins are now classified.

Physical Differences

Apart from the above specifics, the domestic producer interests suggest, again simplistically, that all silicones are similar chemically and, therefore, should be classified in a single tariff number at a single duty-rate (naturally, the highest for the group).

Here, the distinct differences in the molecular composition of the different primary forms determines which is a rubber, a fluid, or a resin. There are differences in the amount of the cross-linking. The Chemical Economics Handbook, put out by the Stamford Research Institute, lists uses of the various basic primary forms of silicones. Rubbers or elastomers are used in aircraft and missile, electronic, electrical, appliances, automotive, and government uses. Silicone fluids are used in waxes and polishes, urethane foams, greases, emulsions, and household and consumer applications. Silicone resins are for electrical purposes, paint, water-repellant and grease coating applications. A copy of the relevant pages from the CEH publication, explaining the various applications, is enclosed. What we suggest by this is that the commercial application for the various types of silicones are fairly well-defined and segmented as to end markets. Congress has recognized the differences which exist between the various types of silicones, both chemically and commercially, by providing for their separate classification. That difference was refined and carried through by the ITC's proposed Harmonized scheme.

Conclusion

We return to the President's direction to the ITC in conducting its harmonization exercise. Avoid tariff rate changes on individual products to the extent practicable, and simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade. The June 30, 1983 ITC report covering silicone products follows that direction precisely, contrary to the domestic producer interest's incredible claim that the duty on silicone rubbers and fluids therein is actually reduced. The staged rates for all silicones in primary form remain exactly the same as under the TSUS. Rubber silicones would be free; most fluid silicones would be 3.7%; silicone resins would remain at 2.2¢/kg. plus 7.7%.

On the other hand, acceptance of the General Electric and Dow Chemical proposal would have the following results contrary to legislative purpose as prescribed in the Tariff Schedules of the United States, contrary to Custom Service application and administration of that law, and contrary to the Presidential direction for harmonization:

1. Silicone elastomers or synthetic rubbers, would be

reclassified, in effect, as "other synthetic plastics" under the Harmonized System, rather than as "For purposes of the tariff schedules," "synthetic rubbers" under the TSUS;

2. The staged duty-rate on silicone rubbers would be increased from "free" to "2.2¢/kg. plus 7.7%";

3. Silicone fluids would be reclassified, in effect, as "other synthetic plastics" under the Harmonized System, rather than as "other organic compounds" under the TSUS;

4. The staged duty-rate on silicone fluids would be increased from "3.7%" to "2.2¢/kg. plus 7.7%."

Those results, illogically, dramatically, and adverse to Congressional purpose and administrative practice, would increase duty-rates under the TSUS for silicone rubbers and fluids. In contrast, the ITC performed exactly the task requested of it. It harmonized the Tariff Schedules of the United States, classification and duty-rate wise, into the nomenclature structure of the Harmonized System. That effort should not now be undone in the name of special interest legislation no matter how subtly couched. If the domestic producer interests are dissatisfied with the duly promulgated classifications and rates for silicones in whatever form, there are legal means available for them to pursue to achieve that purpose. They should not, however, be permitted to circumvent that procedure and use this administrative forum to accomplish indirectly what they have been unable, or unwilling, to accomplish through legitimate legislative means.

For those reasons, we urge the Trade Policy Staff Committee, Office of the United States Trade Representatives, to recommend that the ITC's June 30, 1983 proposed conversions for separate classifications for silicone rubbers, fluids, and resins in HS headings 3910.00.10, "free"; 3910.00.20 at "3.7%"; and 3910.00.50 at"2.2¢/kg. plus 7.7%," respectively, be affirmed.

Respectfully submitted,

SHAW and STEDINA
350 Madison Avenue
New York, N.Y. 10017

It is unclear how much of the reported production of silicone resins is made up of silicones and how much is made up of other materials. Possibly some producers report only silicone content while others report on a gross weight basis. This makes it difficult to estimate the consumption of silicones for resins since silicone-alkyd resins, for example, may contain as little as 15% silicones.

In regard to silicone elastomers, it is not known exactly how much room temperature vulcanized (RTV) silicone rubber is included. The latter are supplied as fluids and pastes for use as adhesives, sealants, and mold-making materials and are generally considered as a separate category by the trade. It was estimated that RTV silicone rubber output amounted to slightly under two million pounds in 1964 (OPD, April 19, 1965).

There may also be some duplicate reporting of basic resins and elastomers at different stages.

CONSUMPTION

It is estimated that 45% of total silicone production goes into silicone fluids, 30% into elastomers, and 10% into resins. A large part of the remainder is probably made up of silane coupling agents. These CEH estimates are very approximate, mainly for the reasons stated under PRODUCTION.

The following discussion includes:

1. Silicone fluids
2. Silicone resins
3. Silicone elastomers
4. Fluorosilicones
5. Silane coupling agents
6. Nitrile silicones
7. Polycarboranesiloxanes

1. [redacted]

As previously noted, the dimethyl and the phenyl methyl fluids are the most important. Both fluids have such a variety of uses that only major applications illustrative of certain characteristics of silicones are mentioned here. Many applications depend upon the excellent water repellency of silicones. These include use in waxes and polishes, the water and stain proofing of fabrics, paper and masonry, coating electrical equipment where surface resistivity is critical, corrosion inhibitors, preventing the caking of powders, and as release agents.

Silicones are poor solvents, and the only solids that dissolve in them are nonionic, and they dissolve only slightly, near their melting points.

SILICONES - CONTINUED

a. Waxes and Polishes

Most furniture, car, and glass waxes and polishes now contain silicones. The reasons are well stated in an article, part of which is quoted below.

> "The properties of silicones which make them useful in polish formulations are incompatibility, lubricity, low surface tension, water repellency, temperature and oxidation resistance, minimum change of viscosity with temperature variations, blandness, lack of odor and inertness.
>
> "Silicone fluids are incompatible with many organic materials. For this reason, they do not soften the wax on polish formulations.
>
> "Because of its lubricity, the silicone functions as a lubricant for the wax crystals. And, since silicone fluids have a low surface tension, they readily flow-out to a smooth surface and impart a glossy finish.
>
> "Silicone fluids are stable at extremes of heat and cold and are not readily oxidized. Therefore, silicone films tend to be highly resistant to weathering.
>
> "Silicones do not create any special polish formulation problems. For example, since silicones are odorless, they do not interfere with perfuming of furniture polishes. And the chemically inert silicones maintain their properties when compounded into polishes."

Source: Meyer, K. L., "Why Silicones Are Used in Waxes and Polishes," Detergent Age, October 1966, p. 56.

The silicone oil content in most polishes varies from 2-5%. Pastes usually have a higher silicone and wax content than polishes.

b. Cosmetics

The physiological inertness, combined with unique surface-active and lubricative properties, of silicone fluids has led to their use in a wide variety of cosmetics.

These properties, as quoted from a recent article, are:

> "Very low surface tension, which improves the spreading of cosmetic preparations.
>
> "No problems of toxicity or skin irritation.
>
> "Colorless, odorless and tasteless.
>
> "Non-volatile.
>
> "Chemically inert and therefore do not react with the usual ingredients in cosmetic preparations.
>
> "Do not become rancid.
>
> "Do not thin out when warmed or thicken when cooled.
>
> "Do not dissolve in water and therefore do not wash off easily.

"Do not form a continuous, impervious film that would keep the skin from breathing.

"Do not leave a greasy or oily feel.

"Do not discolor.

"Do not support bacterial growth."

Source: Harris, M. J., and J. I. Evans, "Uses of Silicones in Polishes, Cosmetics and Household Specialities," Specialties (U.K.), April 1966, pp. 3-9.

Silicone fluids are used in hand creams and lotions, hair sprays, preshave lotions, after-shave lotions, shaving creams, suntan preparations, lipsticks, toothpastes, and deodorants.

c. Urethane Foams

An important market is in flexible and rigid polyurethane foams. Added to the urethane ingredients before foaming, they improve appearance, cell uniformity, and resilience of finished foams.

Total polyurethane foam output in 1965 is estimated to have been about 380 million pounds. Silicones are used mainly in polyether-based polyurethane foams, although smaller quantities are used in some of the polyester-based foams. These estimates are from the CEH Polyurethane Foams report (q.v.). Reportedly, about 0.75% silicone (based on the weight of the reactants) is employed in flexible foams and about 1.0% in rigid foams (industry estimates).

d. Silicone Greases

These greases are made by grinding fillers and other materials into silicone fluids and are employed where high temperatures would destroy petroleum or vegetable oil lubricants. They are frequently used in places where the lubricant comes into contact with solvents and corrosive chemicals.

e. Silicone Emulsions

Silicone fluid-based emulsions have been used in a large number of industries as antifoam agents and release agents. The siloxane content of the emulsions is usually about 50%. Remarkably small amounts are effective (0.0001 to 0.02% of the material to be defoamed). Their nontoxicity makes them most useful to the food industry.

Significant quantities of silicone emulsions are used as stain and water repellents by the textile industry, especially with wash and wear items. They impart a soft silky hand and are resistant to dry cleaning and, to a moderate extent, washing. However, they experience heavy competition from fluorochemicals and their present $3 million market is expected to continue its present decline.

f. Other

In household and other consumer applications, silicone fluids are used in aerosol starch, domestic oven treatment, textile and leather treatments, treatment for ignition systems, rubber lubricants, artificial snow, and ironing aids.

Industrially, their nonstick qualities have encouraged widespread use as release agents, for example, in molds for tires and other rubber goods, glass molding, and wire and cable slip agents. Their former use in coating bread baking pans is believed to have largely been displaced by the use of Teflon®-coated pans. Silicone fluids are used in lubricants and have also been used in hydraulic fluids, e.g., aircraft applications. None is currently used for this latter purpose, however.

2. Silicone Resins

Estimates of silicone resin use in 1962 and 1965 follow.

Consumption of Silicone Resins (Millions of Pounds)

	1962	1965
Electrical insulation		
Coating and bonding	2.50	3.75
Impregnating	1.00	1.50
Laminating	1.00	1.50
Paint	1.50	2.25
Water repellents	1.00	1.50
Release coatings	0.75	1.125
Molding	0.25	0.375
Total	8.00	12.00

Sources: (A) C&EN, June 17, 1963, p. 34 (1962 data).
(B) CEH estimates (1965 data). Calculated from 1962 data on basis of same market breakdown and using 1965 production estimates.

a. Electrical

Silicone resins are particularly valued for their high temperature resistance. This, coupled with their excellent dielectric properties, has encouraged their widespread use in electrical equipment where heat would break down other resins. The market for silicone resins in electrical applications reportedly has reached maturity and future growth is expected to be moderate, particularly in the face of competition from epoxy and polyphenylene oxide resins.

b. Paint, Water Repellents, and Release Coatings

Silicone resins are used in paints to improve heat resistance, durability, and gloss. To improve abrasion and solvent resistance, and to provide better adhesion, silicone resins are frequently copolymerized with other resins, usually alkyd resins.

A typical silicone-alkyd formulation would have a silicone content of from 20 to 30% of the resin solids in the paint. Silicone-containing paints, while superior to organic paints in gloss and durability, are expensive and apparently many home owners are not willing to pay the higher price. However, Montgomery Ward markets a 30% silicone alkyd paint for consumer use. It is estimated that more than 90% of silicone-alkyd paints are used industrially, primarily in equipment finishes. Largely because of their good exterior durability, silicone-alkyd paints provide competition to other alkyd, vinyl, acrylic, and, in some cases, fluorocarbon paints.

Epoxy-silicone plastics are used in protective coatings. Pipeline coatings could prove to be a particularly substantial market. The epoxy provides a coating which is tough and resists abrasion; silicones give one which is durable and which flows on smoothly.

Masonry water repellents were estimated to use about one million pounds of silicone resins in 1962.

Silicone resins have found many applications based upon their nonstick properties. Silicone resin-treated paper is used for covering pressure adhesive surfaces such as "contact paper," adhesive tapes, and photographic film, and for packaging sticky foodstuffs.

3. Silicone Elastomers

Silicone elastomers fall into two broad categories; those that require heat for vulcanization, and those that can be vulcanized at room temperatures, commonly called RTV types. Currently the heat vulcanized types (current production is probably about 12 million pounds) make up a $34 million market. The RTV types (current production is about 2 million pounds) represent a $13 million market (industry estimates).

Applications of both types are based mainly on their outstanding resistance to both high and low temperatures. When they do decompose at high temperatures, the silica residue remaining is itself an insulator so that to some extent silicone rubber insulation continues its function after a fire. For example, they are employed in aircraft and ships where they are used in electrical insulation and seals. Silicone rubber foam is available for applications calling for the above properties plus lightness and heat insulation. The aerospace industry is an important market for RTV silicone elastomers.

Silicone elastomers have excellent resistance to ozone oxidation, nonoxidizing acids, and mild bases. They swell moderately in contact with oil and fuel, but return to their normal state on removal of the swelling agent. Because silicone elastomers seldom contain materials such as plasticizers which may be leached out, they are often used in medical and food processing applications.

An estimate of the consumption of heat vulcanized silicone elastomers in 1965 follows.

Market	Percentage
Aircraft and missile	39%
Electronics	18
Electrical	14
Appliances	12
Automotive	6
Government (direct)	6
Miscellaneous	5
Total	100%

Source: OPD, February 24, 1964, p. 5 (based on Dow Corning as original source).

This estimate does not include consumption of RTV (room temperature vulcanizing) silicone elastomers. These are used in potting and encapsulating electrical and electronic parts and in the fabrication of other rubber parts where superior endurance and extended life expectancy are required.

Much of the early growth of silicone elastomers resulted from use in aircraft, submarine, missile, space, and electronic applications. The aircraft market for silicone elastomers has decreased because the B-47 and B-52 have given way to faster, more effective planes, fewer of which are needed. Similarly, miniaturization reduced consumption in electronics applications in missiles and space use. Gains in consumer-type markets such as appliances (range door gaskets, for example) and automotive use appear to be more than compensating for reductions in these markets, however.

A mixture of silicone rubber and silica reinforcing material shows promise in the surfacing and repairing of airport runways and highway bridges. Although used only experimentally so far, it is said to be superior to currently used coatings such as epoxy, polyester, and urethane, because it does not become hard or brittle and it is waterproof. Another developmental use for silicone elastomers is as a high-quality roofing material. Although about twice as expensive as conventional asphalt materials, it is easier to apply and more durable.

The nonstick characteristics of silicone elastomers are employed in a large number of applications such as printing rolls and conveyor belts carrying sticky foodstuffs. They are also utilized in the manufacture of flexible molds in the plastics and metalworking industries.

An interesting application of silicone elastomers is in making synthetic membranes thin enough to function as artificial gills. Possible uses range all the way from space capsules to submarines, and include heart-lung machines and the industrial separation of gases (CE, November 23, 1964, pp. 94-96).

While the share of silicone resins output used captively (in the order of 10%) has remained about the same between 1959 and 1964, captive use of elastomers has tripled from 8% to 24% over the same period. This has been due partly to some basic producers increasing penetration of the industrial and home markets with consumer-type silicone elastomer products.

H.R. 5429

To provide for the duty-free entry of articles required for the installation and operation of a telescope in Arizona.

No comments were received on this bill.

H.R. 5436

To provide for the duty-free entry of organs imported for the use of Trinity Cathedral of Cleveland, Ohio.

No comments were received on this bill.

H.R. 5448

To provide duty-free treatment of articles previously imported, with respect to which duty was previously paid.

STATEMENT OF MORTIMER FULLER III, PRESIDENT, GENESEE & WYOMING RAILROAD CO.

I appreciate the opportunity to comment on H.R. 5448. Although this legislation was introduced by Congressman Conable as the result of a specific problem involving the Genesee and Wyoming Railroad, it addresses a problem that could potentially harm many other U.S. businesses. It corrects an inequity in the law which forces American companies to pay customs duty twice on certain equipment that is leased across U.S. borders.

The Genesee and Wyoming Railroad Company is a shortline railroad headquartered in Retsof, New York. Through affiliated companies, we own and lease covered hopper cars. Ordinarily, we use our covered hopper cars for hauling rock salt from our Retsof operation. However, when rock salt freight business is low because of seasonal or weather factors, we attempt to lease these cars to other users.

Among the cars controlled by Genesee and Wyoming are approximately 415 covered hopper cars that were manufactured in Canada and imported into the United States during late 1978 and early 1979. At the time these cars were imported, full duty was paid in accordance with United States Customs laws and regulations. During 1984, we had a surplus of cars at our Retsof operation, and sought to place some of these cars on a short term lease arrangement. Consequently, we entered into a lease with the Canadian National Railroad under which they would lease 75 of the Canadian made covered hoppers for a four month period with the possibility of some short term renewals. After the deal had been struck, we learned that according to Schedule 8 of the Tariff Schedules of the United States, if those 75 cars were delivered under lease to the Canadian National Railroad, upon re-entry into the United States at the end of the lease term we would be required to pay, once again, full duty on the depreciated value of those railroad cars. The amount of this duty would have far exceeded the full amount of the rentals Genesee and Wyoming would collect from the entire four month lease. Obviously, we were not able to go through with the lease of the Canadian cars.

There are three very good reasons to approve this legislation.

First, and foremost, the current law is clearly unfair. Why should a company have to pay the same duty on the same equipment two times, simply because that equipment crossed the border. There is in fact no economic or policy justification. It is simply an inequity that arises from what must be considered a technical flaw in the original law.

Second, while there is no economic or policy justification for maintaining the status quo, there is clear justification for the proposed change. The current law reduces the opportunity for U.S. companies to do business. It denies them the chance to find the best economic opportunity for the lease of their equipment. It reduces the flow of funds into this country, thus exacerbating our balance of payments problem.

Third, there is a substantial surplus of railroad cars in the United States at this time. There have been legislative and administrative efforts to deal with this situation, the most prominent being the recent Interstate Commerce Commission's decision on boxcar deregulation. H.R. 5448 is a simple and efficient way for Congress to assist in alleviating the car surplus problem by expanding the available market for U.S. owned equipment.

In short, I believe this change serves three very useful purposes without any negative impact on our Customs laws. A company such as ours will continue to pay the full duty on its foreign made equipment, and will then be given the opportunity to make the most efficient, economical and productive use of that equipment. I hope the Committee will support this needed change.

H.R. 5449

To provide for fast-track treatment of injurious agricultural imports.
See also comments of the American Farm Bureau Federation at p. 392.

BARNETT & ALAGIA,
Washington, DC, May 18, 1984.

Re: H.R. 5449: to provide for fast-track treatment of injurious agricultural imports

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

MR. CHAIRMAN: Thank you for giving me the opportunity to share the views of the Florida Fruit and Vegetable Association ("Association") with this Committee. My name is John Himmelberg and I am an attorney with the law firm of Barnett & Alagia in Washington, D.C. and Palm Beach, Florida. I am authorized to present the views of the Association before the Committee on H.R. 5449.

SUMMARY OF COMMENTS

I. Currently, the Trade Act of 1974, Title II, "Relief from Injury Caused by Import Competition" provides an outlet for certain U.S. industries troubled by foreign imports to this country but fails to accommodate agricultural concerns.

II. Perishable, agricultural products need to be considered separate and apart from other commodities when fulfilling relief procedures because of their special nature.

III. H.R. 5449 offers what the present process does not—a condensed time-frame that suits the special needs of agriculture.

COMMENTS

Under current law, a party who has filed a petition with the International Trade Commission (ITC) alleging injury from imports can expect an answer from the ITC within 6 months of formally filing its concern. The ITC "shall *promptly*" make an investigation to determine whether an article is being imported into the U.S. in such increased quantities as to be a substantial cause of serious injury. The results of the investigation in the form of a report "shall be made at the *earliest practicable time* but not later than 6 months after the date on which the petition is filed." In addition, the ITC "shall promptly" make the report public. The words "promptly" and "earliest practicable time" have been necessarily qualified by the 6-month time frame for a determination. The President also must work within a time-frame by law when determining the type and level of import relief. He has 60 days after the date on which he receives an affirmative finding from the ITC to make a decision. In the best of circumstances, at least 8 months may pass before any relief is felt by a party. If the President's decided action differs from that recommended to him by the ITC, the 8 months easily can become 12.

It is the Association's view that the time factor for this import relief procedure denies "prompt" relief, that is, relief given in a "practical" amount of time, to one whole sector of our economy—the agricultural sector. A requalification of "prompt" is needed to establish a time frame that better fits the agricultural picture. In the established time frame of the Trade Act of 1974, agricultural imports need emergency attention. Anything less results in unrecoverable costs to agricultural producers. The present system does not suffice unless a change can be implemented in the treatment time of a petition from an agricultural party.

Legislation which addresses and answers the need for fast-track treatment of injurious agricultural imports is H.R. 5449. This measure offers what the present relief process cannot—a condensed time-frame that suits the special needs of agriculture. A speedier determination not only relieves the injured party faster but also heightens the effect of relief on consumer. Under H.R. 5449, the Secretary of Agriculture's involvement is enlisted in an emergency relief request. The proposed 14-day cap on time to decide on substantial cause of injury and 7-day limit on determination of type and level of action or to not take emergency action greatly decreases the extent of injury to agricultural concerns. Support and precedent for this bill can be found in the Caribbean Basis Economic Recovery Act, P.L. 98-67. Although untried as yet both the Federal agencies involved and many domestic industries including this Association believe such legislation will help to insure prompt and fair relief from injurious imports of agricultural products.

The Association supports H.R. 5449 wholeheartedly and urges a favorable vote from the Committee.

Sincerely,

John M. Himmelberg,
Washington Counsel, Florida Fruit and Vegetable Association.

Mike Masaoka Associates, Inc.,
Washington, DC, May 18, 1984.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon, On behalf of our client, the West Mexico Vegetable distributors Association (WMVDA) of Nogales, Arizona, we are submitting the attached statement concerning H.R. 5449, a bill to allow "fast-track" quotas or tariffs to be imposed against agricultural producers without a full investigation of the need for this relief.

We oppose passage of H.R. 5449 for the following reasons, as further explicated in the attached statement. H.R. 5449 would:

ignore U.S. international obligations under GATT, by imposing import relief without an investigation and finding of injury to the U.S. industry;

have adverse economic consequences for the U.S. consumer in terms of supply and price of fresh vegetables, especially when U.S. crops are affected by weather conditions;

provide "fast-track" relief which is unfair and impractical, given the drastic short-term fluctuations in price and supply inherent to the fresh produce market;

discourage trade in produce and development of foreign supplies to meet U.S. demand, particularly by encouraging the filing of meritless petitions for harassment purposes.

For these reasons, as further discussed in the attached statement, we oppose enactment of H.R. 5449, and urge the Committee not to allow hastily imposed import restrictions against imported fresh vegetables.

Sincerely,

Mike M. Masaoka.

Attachment.

On behalf of West Mexico Vegetable Distributors Association (WMVDA) of Nogales, Arizona, we are submitting the following comments concerning H.R. 5449, a bill to allow "fast-track" quotas or tariffs to be imposed against agricultural producers without a full investigation of the need for this relief. WMVDA is an association composed of more than 40 American businesses that import and distribute Mexican-grown fresh vegetables. These vegetables are imported during the winter months and distributed throughout the United States and Canada. They include tomatoes, cucumbers, squash, bell peppers, egg plant, and others.

At present, Section 201 of the Trade Act of 1974 ("the Escape Clause"), allows the President to impose import relief against products which the International Trade Commission determines are being imported in such increased quantities as to be a "substantial cause of serious injury, or threat thereof" to U.S. producers. 19 U.S.C. § 2251(b). The findings required under this provision are based upon international obligations of the United States. See GATT Article 19A. Proceedings to determine if imports are the substantial cause of serious injury or threat thereof to a U.S. industry are among the most complex and technically difficult conducted by the International Trade Commission.

H.R. 5449 would amend Section 201 of the Trade Act of 1974 to allow imposition of provisional relief against agricultural products without a finding that imports are a substantial cause of serious injury. Instead, provisional relief could be imposed during the pendency of an escape clause investigation concerning perishable agricultural products if the Secretary of Agriculture finds "reason to believe" increased exports are a substantial cause of serious injury or threat thereof.

WMVDA is opposed to H.R. 5499 for the following reasons.

First, imported fresh vegetables play a crucial role in meeting consumers' demand for produce and dampening inflationary pressures at times when adverse weather conditions have damaged U.S. crops. Any attempt to limit produce imports at times when the need for imports is high will have profound economic consequences for the United States consumer.

Second, short term fluctuations in the supplies of agricultural products are as inevitable as bad weather. The supply and price of fresh produce fluctuate rapidly, sometimes by the hour. Moreover, a poor U.S. harvest one year, caused by a drought or flood, for example, might be followed by a bumper crop the next. As a result, the only true measure of potentially injurious increases in imports is one taken over a relatively long period of time, a period greater even than one growing season.

Temporary increases in vegetables imports are to be expected and are not necessarily the cause of serious long term injury to the U.S. industry. Fast-track import relief measures, however, imply granting import relief on the basis of short term increases in import levels. In the perishable vegetables industry, such relief will be needless and costly.

Third, the availability of fast-track relief might well encourage the filing of meritless petitions for harassment purposes, since import relief could be granted without extensive investigation. Moreover, the Department of Agriculture has little experience in the administration of import relief statutes. The threat of hastily applied import relief would discourage trade in produce and the development of foreign supplies of produce which are needed to meet U.S. demand.

While WMVD is sympathetic with the intention of the bill to provide assistance to a domestic industry, WMVD must point out that the perishable product business is inherently risky and full of hazards of increased, decreased, or non-saleable supplies. WMVD would like to emphasize that the fresh produce business cannot be protected from the vicissitudes of the weather and climate without resorting to drastic controls of the market that would be against the best interests of consumers as well as producers.

While a farmer who faces increased import competition this month might like to see fast-track import relief put into place the following month, the realities and factors of the fresh produce industry make such fast-track relief both unfair and impractical.

For these reasons, WMVDA opposes H.R. 5449, and urges the Committee not to allow hastily imposed import restrictions against imported vegetables.

H.R. 5453

Authorizing the President to proclaim modifications in the rates of duty for certain articles in trade in civil aircraft.

No comments were received on this bill.

H.R. 5454

To extend duty-free treatment to certain tractor parts.

See also comments of the American Farm Bureau Federation at p. 392.

[The following two letters were forwarded by Congressman Glickman:]

HESSTON CORP.,
Hesston, KS, May 14, 1984.

HOUSE WAYS AND MEANS COMMITTEE,
Washington, DC.

DEAR COMMITTEE: Hesston Corporation is a manufacturer and distributor of agricultural farm equipment. To complement this line of equipment, they import a full line of agricultural tractors under the U.S. tariff authority (TSUS) 692.34. The service parts for these tractors are also imported. Some of these parts are dutiable because of being in a specific class of their own.

The inequities that now exist between the parts that are used for tractors and those that are used for other agricultural and harvesting equipment that are imported, make it important that we support legislation that is now proposed in H.R. 5454 by adding a new item 840.42 in paragraph 7 of Schedule 8 of tariff schedules of the United States. (19 U.S.C. 1202)

The American farmer who is now paying for the inequities that now exist would be the ultimate beneficiary.

We feel this bill will help current U.S. policies concerning the free trade in the agricultural industries world wide.

Your support of H.R. 5454 would be greatly appreciated.

Sincerely,

MILT MILLER.

MASSEY-FERGUSON INC.,
Des Moines, IA, May 14, 1984.

Hon. DAN GLICKMAN,
House of Representatives, 2435 Rayburn Building, Washington, DC.

DEAR MR. GLICKMAN: Please accept this letter as our company's support for your introduction to the House Ways & Means Committee, House Bill 5454, a Bill to create a much needed new tariff item 870.42 which will allow parts for tractors ruled suitable for agricultural use classified under Tariff Item 692.34 to be imported duty free.

The introduction of Tariff Item 870.42 is in line with the recently created Tariff Item 870.45 which provides duty free treatment of parts for agricultural and horticultural machinery in Tariff Items 666.00, etc. and should be administered the same as 870.45.

As a matter of interest, Canadian Customs Tariff Item 40938-1 provides duty free treatment for parts including some accessories for tractors. I have enclosed a copy of page 104 of McGoldrick's Customs and Excise for your reference.

We strongly support Bill 5454 and would be pleased to offer any further information if needed.

Yours truly,

W. BARTKIW,
Customs Coordinator.

Enclosure.

CANADIAN TARIFF CLASSIFICATION.

104 **GROUP TARIFF**

			Brit. Pref.	[redacted]	Gen.	G.P.T.	U.K. IRE.
	All the foregoing for use on the farm for farm purposes only: Brooders, Ensilage cutters; Fodder or feed cutters; Hay loaders; Hay tedders; Post hole diggers; Potato diggers; Potato planters; Snaths; Stumping machines; ② All other agricultural implements or agricultural machinery, n.o.p.; Parts of all the foregoing ④		Free	Free	Free	Free	Free
40926·1	Incubators for hatching eggs; poultry sex testers, parts of the foregoing ②		Free	Free	Free	Free	Free
✓ 40928-1	Hay presses and complete parts thereof ②		Free	Free	Free	Free	Free
✓ 40930-1	Scythes, sickles or reaping hooks, hay or straw knives, edging knives, hoes, pronged forks, rakes, n.o.p. ④		Free	Free	Free	Free	Free
40932·1	Fanning mills; peaviners; corn husking machines; threshing machine separators, including weighers, wind stackers, baggers and self-feeders therefor; complete parts of all the foregoing ②		Free	Free	Free	Free	Free
40934-1	Windmills and complete parts thereof, not including shafting ②		Free	Free	Free	Free	Free
40936-1	Traction ditching machines (not being ploughs) and complete parts thereof ②		Free	Free	Free	Free	Free
[redacted]	[redacted] following integrated self-propelled machines front-end loaders or tractor shovels, tractor dozers, log skidders, log loaders, fork lift or lift trucks, combination excavating and transporting scraper units, combination excavating and loading machines street sweepers, mobile compressors, and snow moving machines; [redacted]		Free	[redacted]		Free	Free
40940·1	Traction attachments designed to be combined with automobiles in Canada for use as traction engines and parts thereof ②		Free	Free	Free	Free	Free
40942·1	Portable engines with boilers, in combination for farm purposes; horse powers, complete parts of all the foregoing ②		Free	Free	Free	Free	Free
40944·1	Equipment for generating electric power for farm purposes only, viz.: engine, gas tank, generator, storage battery, and switchboard or panel; and complete parts of the foregoing ②		Free	Free	Free	Free	Free
40946·1	Pasteurizers for dairying purposes and complete parts thereof ②	1-83 1-84	Free Free	7.5% 5.6%	25% 25%	Free Free	Free Free
40948·1	Auxiliary internal combustion engines incorporated in or attached to, or to be incorporated in or attached to, agricultural implements or agricultural machinery, parts of the foregoing ②		Free	Free	Free	Free	Free

ACCESSORIES N.O.P (NOT OTHERWISE PROVIDED)

INTERNAL COMBUSTION TRACTORS INCLUDES AGRICULTURAL & INDUSTRIAL TRACTORS.

H.R. 5455

To amend the Tariff Schedules of the United States to clarify the classification of unfinished gasoline.

Amber Refining Inc.,
Abilene, TX, May 16, 1984.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon. Amber Refining is an independent crude oil refiner with a facility located in Ft. Worth, TX. We are seriously concerned about the adverse impact of imported petroleum products on domestic refiners such as ourselves. In particular we are concerned about the controversial proposal contained H.R. 6455 which would attempt to reduce the tariff burden currently imposed on low grade C gasoline and other such imports.

The impact of H.R. 5455 should not be treated casually, since any reduction in the current fees imposed on such imported products would seriously and adversely effect the domestic refining industry which is already suffering from underutilized capacity in strained financial circumstances, Foreign refiners are not subject to astringent environmental requirements, superfund and windfall profits taxes, high energy and labor costs which are imposed on domestic petroleum refiners and currently import fee levels do not fully offset these burdens. As a result of having to bear these additional costs of doing business in the United States, domestic refiners are vulnerable to the dumping of low grade imports from foreign refiners.

We believe that it is important to our national security to maintain a viable independent domestic refining industry, therefore, we urge members of the trade subcommittee of the Ways and means Committee to consider this controversial proposal very carefully. At a minimum we would recommend that the trade subcommittee hold hearings on this issue to allow input from the industry most affected by the proposal and a thorough discussion of the issues. We believe that a very persuasive case can be made for the proposition that our current import fee structure should be strengthened instead of weakened in that consideration should be given to imposing a prohibition on the importation of any petroleum products which contain lead additives. As a domestic refiner we would like to see that this issue is thoroughly debated before the Trade Subcommittee before any action is taken which could have such devastating effects on our industry.

John D. Hemphill,
Vice President, Legal.

Koch Industries Inc.,
Wichita, KS, May 18, 1984.

Re. H.R. 5455

Mr. John Salmon,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Longworth House Office Building, Washington, DC.

Dear Sir: Koch Industries, Inc., as an importer of petroleum products into this country, would like to express its support for H.R. 5455 which would amend the tariff schedules of the United States to clarify the classification of unfinished gasoline. As the bill's heading indicates, it is a clarification of the tariff schedules, and our support for this legislation is based upon our desire for a clarification and certainty when dealing with the tariff schedules. It is our understanding that this bill would clarify this tariff schedule so that import duties on unfinished gasoline will be at the same rate as motor fuel, consistent with historic industry and Customs Department practices, as well as earlier legislative intent.

We would like to illustrate the need for this legislation by detailing the problem we are facing under the existing tariff schedules, which is as follows:

The portion of the tariff schedules of the United States dealing with motor fuel currently read:

475.25 Motor Fuel, 1.25 cents/gal., 2.5 cents/gal., 0.20 Gasoline; 0.30 Jet Fuel, naptha-type; 0.50 Jet Fuel, kerosene-type; and 0.60 Other.

H.R. 5455 would amend Item 475.25 by inserting "including unfinished gasoline" after "motor fuel". (Motor Fuel is currently defined in headnote 2, part 10, schedule 4, as "any product derived primarily from petroleum shale or natural gas whether or not containing additives, which is chiefly used as a fuel in internal-combustion or other engines". Clearly, gasoline (Item 475.20) is intended to be taxed at 1.25 cents per gallon. (For comparison purposes, all references to rates of duty shall be to the rate of duty set forth in Column I of the schedules.)

But what is "gasoline"? Those of us in the oil industry have a clear idea of what constitutes gasoline, but that understanding has not always been consistent with the interpretations made by the Customs Department. A lack of clarity in the tariff schedules has created a situation where different interpretations by industry and the Customs Department have developed.

The specification standards to which various products are expected to conform is supplied in this country by the American Society for Testing and Materials (ASTM). The ASTM standard specifications for automotive gasoline (designation: D439-81) provides for an Anti-Knock Index (commonly referred to as Octane Index) range at RON + Mon/2 from 85 to 93, which is consistent with engine requirements of the majority of vehicles operated in this country. However, that is not necessarily a universal standard for gasoline. Many refineries in other parts of the world produce gasoline with an Anti-Knock Index higher or lower that the standards prescribed by the ASTM. Gasoline Anti-Knock indices can run from as high as 99.0 RON to as low as 60 RON for gasoline from foreign refineries. In spite of the variance in Anti-Knock Index numbers, all of these products would be considered to be gasoline by those involved at all levels of refining and marketing, with motor fuel the only intended use.

A specific example of a problem incurred by this company might provide further illustration. A cargo of gasoline with an Anti-Knock Index of 81.8 was recently imported from a Latin American refinery, with the anticipation of an import duty of 1.25 cents per gallon. A petroleum product cargo consists of hundreds of thousands of gallons and the profit margin per gallon is typically a fraction of a cent. Therefore, the import duty plays a key role in evaluating the economic viability of any import transaction. In this particular instance, even though both the buyer and seller considered the product involved to be gasoline (in spite of the reference to use in the definition of motor fuel contained a headnote 2(b) part 10, schedule 4), actual use is not intended to be a factor in interpreting the tariff schedules. However, the octane level of this cargo was raised and the product was actually sold and used domestically as gasoline). The Customs Department refused to classify the product as gasoline because it did not meet the ASTM standard for Octane Index. The product instead was classified as mixtures not specifically provided for: Mixtures that are in whole or in part hydrocarbon derived in whole or in part from petroleum, shale oil, or natural gas (Item 432.00) with a rate of duty of 5 percent ad. val. The resulting import duty was considerably higher than expected and turned a profitable transaction into an unprofitable one.

Our experience with this cargo was not an isolated incident. We are hearing and reading about similar incidents occuring throughout the industry with increasing frequency. In fact, we've told our marketing people to no longer pursue opportunities for contracts for unfinished gasoline.

In summary, Koch is urging that H.R. 5455 be adopted for the purpose of clarifying the tariff schedules and bringing them in line with the generally accepted industry practices. It is our position that to classify gasoline upon the Anti-Knock Index is arbitrary and not in line with foreign or domestic oil and gas industry practices.

Thank you for your consideration of our view on this matter.

Very truly yours,

Elton A. Ellison.

Petroleos Mexicanos,
Washington, DC, May 16, 1984.

Hon. Sam M. Gibbons,
Chairman, Subcommittee on Trade, U.S. House of Representatives, Washington, DC.

Dear Mr. Gibbons: Petroleos Mexicanos (Pemex) is a decentralized public agency of the government of Mexico, created by Decree of the Congress of the Mexican United States of June 7, 1938.

The principal purposes of Pemex are the exploration, production, refining, transportation, storage, distribution, and first-hand sale of petroleum derivatives, and any other activities that are directly or indirectly related to the petroleum and petrochemical industries.

In that capacity, Pemex would like to express to the Subcommittee on Trade its views concerning H.R. 5455 which has been proposed by Congressman Dan Glickman to clarify the tariff treatment by the U.S. Customs Service of U.S. imports of "unfinished gasoline."

Pemex interest in this issue results from recent changes made by some U.S. Customs district offices in their classification of gasoline that does not meet ASTM octane standards.

Pemex produces gasoline in Mexico primarily for sale in Mexico. This product is used by consumers as automotive gasoline.

As you may be aware, Mexico is undergoing and overcoming a severe financial crisis through an adjustment program. One of the main policies outlined in this program is to increase domestic prices of energy products to maintain a closer relationship with international prices. The increases in the domestic price of gasoline, combined with the decline in economic activity that Mexico has been experiencing, have resulted in a surplus of this gasoline which is available for export.

Some U.S. distributors have been purchasing this product from Pemex for use in the United States as a "blending stock" in the production of automotive gasoline that is sold in the U.S. market.

Application of this product as a blending stock enables U.S. companies to produce gasoline appropriate for the U.S. market at reduced costs which can be passed on to U.S. consumers. While gasoline produced by Pemex would have been suitable, several years ago, for direct sale to U.S. consumers as automotive fuel, changes in U.S. transportation policy (particularly the requirement for increased mileage in order to conserve gasoline) have made the use of Mexican gasoline, in the form imported, unsuitable for direct sale to U.S. consumers. Consequently, although Pemex gasoline is sold directly to consumers in Mexico and is used in Mexico as "motor fuel," its principal use in the United States is as blending stock to be combined with higher octane products. After blending, the resulting product is sold to U.S. consumers for use as automotive fuel.

Historically, Pemex experience has been that the gasoline it sells to its U.S. customers has been classified under U.S. tariff provisions applicable to "motor fuel" (TSUS. Item No. 475.25). The currently applicable rate under this classification is 1.25 cents per gallon.

In August 17, 1983 the U.S. Customs Service in Treasury Decision T.D. 83-173 promulgated new standards to be applied by the Customs Service in determining whether or not a particular imported product could be classified as "motor fuel." These new standards changed the previously applicable specifications for octane rating of automotive gasoline, with the result that some U.S. Customs districts are now taking the position that Mexican gasoline that does not meet the ASTM octane standards and that was previously classified under TSUS Item No. 475.25, no longer qualifies for classification as "motor fuel."

It is not yet clear what alternative classifications will be applied by the Customs district office, but some preliminary consideration has been given to classification under the TSUS Item 432.10 which is applicable to imports of certain hydrocarbon mixtures. The duty under TSUS Item 432.10 is currently 5 percent ad valorem "but not less than the highest rate applicable to any component material."

Various duty rates which have been mentioned as possibly applicable by the U.S. Customs Service range anywhere from a low 5 percent ad valorem to as much as 18 or 19 percent ad valorem. In our experience, even an increase in duty from 1.25 cents per gallon to 5 percent (approximately 4-5 cents per gallon assuming the minimum rate under TSUS Item 432.10 is applicable) adversely affects the sale of this product to U.S. importers. In addition, the uncertainty as to what the final rate of duty is likely to be, makes it unlikely that U.S. importers will purchase this product, even though this product offers significant potential benefits for U.S. consumers of automotive gasoline.

As was mentioned above, Mexico is overcoming a financial crisis and Pemex exports of gasoline represent an important source of foreign exchange that the country needs in order both to fulfill our financial commitments and to continue to acquire U.S. goods.

We therefore strongly support passage of H.R. 5455 and would appreciate your consideration of this matter.

Sincerely yours,

ALFREDO GUTIERREZ KIRCHNER,
General Representative.

STATEMENT OF THE SOUTHLAND CORP., AND CITGO PETROLEUM CORP.

The Southland Corporation (Southland) is the nation's largest independent retailer of automotive gasoline. The CITGO Petroleum Corporation (CITGO), a wholly-owned subsidiary of Southland, operates a 330,000 barrel per day refinery which is the 10th largest in the United States and one of the most technologically sophisticated refineries of the world.

Through 7-Eleven, Super-7 and CITGO Quik Mart outlets, Southland expects to market more than two billion gallons of gasoline in 1984. Southland's success in gasoline marketing has been achieved by providing consumers quality motor fuel products at competitive prices 24 hours a day.

To augment the volumes of gasoline supplied directly by CITGO from its refinery in Lake Charles, Louisiana, Southland has imported competitively priced supplies of gasoline.

Recently the Customs Service has taken administrative steps to change a long-standing practice under which 83 octane leaded gasoline could be imported as "motor fuel" subject to a 1.25 cents per gallon duty. Shipments of foreign leaded regular gasoline are currently being reclassified by the Customs Service as organic chemical mixtures (USTSA Items 430.10 or 432.10) or benzenoid mixtures (USTSA Items 407.09 or 407.16) subject to ad valorem duties ranging from 5% to 13.6%, or more.

The Customs Service's action produces inconsistent, even bizarre, results in particular cases. The uncertainty generated by the Customs Service's actions make commercial planning impossible.

For example, the Customs Service has indicated that one shipment of leaded gasoline imported by CITGO from Mexico last August will be classified as an organic chemical mixture subject to a 5% ad valorem duty rather than as motor fuel subject to a 1.25 cents per gallon duty. At the same time, Customs has indicated it plans to classify another shipment of leaded gasoline imported by CITGO from Mexico as a benzenoid mixture because the benzenoid content of the shipment exceeds the maximum allowed for organic chemical mixtures. Ordinarily such classification would result in an even higher duty rate than that applied to the other shipment. However, because a Generalized System of Preferences exemption applies to benzenoid mixtures (but not to organic chemical mixtures), zero duty will be imposed on this shipment!

Southland and CITGO support H.R. 5455 as needed to provide greater certainty respecting the classification of refined petroleum products as motor fuel. Increased certainty is needed if international trade with major U.S. trading partners is to continue.

Imported gasoline from China is the largest single export item to the U.S. from China. Reclassification of the Chinese gasoline as organic chemical mixtures will hinder U.S./China trade and U.S. exports of high-technology products because the Chinese will lack the hard currency (previously provided by Chinese exports of gasoline to the U.S.) with which to pay for U.S. goods.

Similarly, Mexico, another major U.S. trading partner will experience a significant decrease in its U.S. trade. The U.S. should be concerned that precipitous reductions in Mexican export trade with the U.S. will contribute to impairing Mexico's ability to repay its international debts.

Motorists will shortly feel the effects of Custom Service's actions. By making it more difficult or more expensive to import gasoline, the Customs Service is reducing the level of competition in the retail petroleum marketplace. Products previously supplied by imports will be replaced with higher priced domestic gasoline.

Congress should not permit this to occur through administrative action. If protectionist tariff policies are to be established, Congress should adopt such policies, rather than the Customs Service.

Southland and CITGO do not seek special reduced tariffs for motor fuels or blending stock used to produce motor fuel. Southland and CITGO believe the federal government should be committed to policies which promote adequate supplies of competitively priced gasoline for consumers and which enhance our country's international trade policy. Predictability in application of the tariff schedules of the United States is essential to that goal.

SUPPLEMENTAL STATEMENT OF THE SOUTHLAND CORP., AND CITGO PETROLEUM CORP., ON H.R. 5455

On May 18, 1984, The Southland Corporation (Southland) and its wholly-owned subsidiary, CITGO Petroleum Corporation (CITGO), filed comments in support of H.R. 5455. The purpose of this Supplemental Statement is to respond to the concerns of some who mistakenly oppose H.R. 5455 based upon concerns respecting protection of domestic refiners.

Due to an administrative change made in 1983 to the specifications of gasoline, the tariff schedule definition of "motor fuel" (USTS Item 475.25) no longer covers refined petroleum products which were historically imported as motor fuel and used as blending stock to produce gasoline. Under prior Customs Service practice, blending stocks for gasoline were generally dutied at the same rate as finished gasoline. Currently, however, blending stocks are generally subject to prohibitively higher rates of duty—ad valorem rates of duty as high as 13.6% or more. Such treatment makes no sense in terms of protecting domestic refiners from foreign competition, however, as long as the duty rate for finished gasoline remains unchanged at 1.25 cents per gallon.

Moreover, due to the same administrative ruling, other blending stocks which in the past were also tariffed at 1.25 cents per gallon may now enter the U.S. at zero duty. Those who desire increased protection of domestic refiners certainly cannot applaud zero duty treatment of gasoline blending stocks which heretofore had been dutied at 1.25 cents per gallon.

H.R. 5455 does not involve the broad question of the extent to which domestic refiners should be protected from foreign competition through higher duties on refined petroleum products. H.R. 5455 is narrowly targeted to eliminate anomalous treatment currently accorded motor fuel blending stocks under the tariff schedules. The current disqualification of all blending stocks from the motor fuel category produces inconsistent, indeed bizarre results in particular cases. H.R. 5455 seeks to rationalize the tariff treatment of blending stocks used to produce gasoline with that of finished gasoline. In so doing, however, H.R. 5455 does not change the rate of duty applied to finished gasoline. Unless the 1.25 cents per gallon duty on finished gasoline is increased, defeat of H.R. 5455 will not increase protection of domestic refiners. Nor will enactment of H.R. 5455 either reduce the level of protection domestic refiners currently enjoy nor prejudge the broader question whether a higher rate of duty should be applied to motor fuel in order to provide increased protection for domestic refiners.

TOSCO CORP.,
Santa Monica, CA, May 17, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: This letter is submitted by Tosco Corporation in response to your request for comments with regard to H.R. 5455. Tosco is the largest independent refiner on the West Coast and one of the largest nationwide. Our principal business is providing finished petroleum products, primarily gasoline to independent marketers. To this end, we have invested heavily in refining capability that enables us to refine low quality crude oils and provide gasoline and other valuable products.

We are very concerned about H.R. 5455 and any related bills. Because this bill would reduce the duty on imported gasoline which is unsuitable for use in internal combustion engines, it is a significant piece of legislation which will work to the detriment of the domestic refining industry. Tosco urges the Committee to hold hearings on the bill in order to fully understand its ramifications, and to carefully consider the public comments.

H.R. 5455 would overturn a statutory application which establishes that imported gasoline unsuitable for use as a motor fuel will be subjected to a higher duty than gasoline which is suitable for use in engines. The bill would accomplish this by amending the tariff schedule definition of "motor fuel" to include "unfinished gasoline," defined as gasoline which is outside the octane range suitable for internal combustion engines.

Although H.R. 5455 purports to be simply a clarification, it is actually a substantial modification of current policy. The current policy of subjecting such "unfinished," sub-specification gasoline to a higher tariff is sound and should not be modified by Congress. Congress has long recognized the importance of appropriate import duties to ensure a healthy domestic refining industry. In this regard, the principal reasons for maintaining a higher duty on gasoline which fails to meet specifications are discussed below.

First, sub-specification gasoline is produced principally as a by-product in relatively simple refineries in countries where the primary fuel requirements are distillates and fuel oils, not gasoline. This creates a strong motivation to sell the surplus gasoline abroad at whatever price is necessary to assure a market. In recent years, increasing quantities of sub-specification gasoline have been imported into the United States, resulting in a difficult competitive situation for domestic refiners who must produce their product under strict United States environmental, labor and energy requirements and marketing their product at full cost.

Second, each gallon of sub-specification gasoline imported backs out a gallon of domestically refined gasoline, with a subsequent loss of jobs and income. Importers of sub-specification gasoline sell primarily to independent marketers, which are the traditional customers of the non-integrated, independent refining sector. The competitive injury from such imports exacerbates the already difficult economic position of independent refiners vis-a-vis the major integrated oil companies.

Third, many domestic refiners have upgraded their facilities to produce unleaded gasoline to meet United States environmental standards. The imported, sub-specification gasoline is primarily a leaded product or must have lead added to burn adequately in gasoline engines. It is not sound policy to encourage imports of leaded gasoline when domestic refiners have made substantial investments to meet stringent limitations on the amount of leaded gasoline they can produce.

In summary, the policy of encouraging importation of gasoline that fails to meet specifications will work to the detriment of domestic refiners that have invested to produce high quality, environmentally acceptable product. If domestic refinery capacity is forced to shut down as a result of imported sub-specification gasoline, it will be difficult to start up again. This will result in lost flexibility to supply domestic markets and makes the country even more dependent on less secure foreign products.

We appreciate the opportunity to submit these comments, and, again, we urge the Committee to hold public hearings on H.R. 5455 and to fully consider its ramifications for the domestic refining industry.

Sincerely,

CHARLES P. EDDY,
Director, Government Relations.

USA PETROLEUM CO.,
Santa Monica, CA, May 15, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: USA Petroleum Company (USA) is a small independent refiner operating a 27,000 B/D refinery in Ventura, California. In addition we market petroleum products at the wholesale and retail level throughout the United States and Puerto Rico.

USA opposes any attempt to reduce tariffs on some imported gasoline blendstocks by specifically applying the finish gasoline tariff to materials outside the ASTM octane range and to some unfinished gasoline. This opposition is supported by the following reasons:

1. The reduction of cost of imports increase the competition to the small independent refiner, which must adhere to higher cost of manufacturing created by:

(a) The additional cost of equipment required for manufacturing products that eliminate the environmental emission to the atmosphere, which is not required by many foreign countries producing blendstocks.

(b) The specification standards of gasoline required by the States and national regulations reduces the yield of high return products from crude oil as well as increasing the cost to produce.

2. Motor gasoline imports have increased from 158 M/BBLS a day in January, 1981 to 233 M/BBLS a day in January, 1984.

Other unfinished petroleum products imports which include gasoline blending components have increased from 434 M/BBLS a day in January, 1981 to 685 M/BBLS a day in January, 1984, a 60% increase in three years mainly at the expense of the independent refiners.

3. Approximately 85 refineries have been forced out of business or closed because of the imports and lower demand for gasoline since 1981. Of these 85 refineries we estimated better than 90% or 77 of these closures were independent refiners.

4. With all the closures mentioned above the refineries still running are only operating at approximately 75% of capacity which is too low to encourage the expansion or retrofitting refineries for efficient operation. Increased imports will only increase this nation's dependence on foreign countries in the future.

In summary we urge the committee to hold open hearings on the very controversial bill, H.R. 5455 to assess the economic impact on the complex petroleum product market.

The undersigned, Edward T. Smolarski, is a partner of USA Petroleum Company and is in charge of marketing and supply and is qualified to submit this letter on behalf of the Company.

Sincerely yours,

EDWARD T. SMOLARSKI,
Executive Vice President, Supply and Distribution.

H.R. 5462

To amend the Tariff Act of 1930 to provide that certain imports of plywood be admitted free of duty.

STATEMENT OF BRONSON J. LEWIS, EXECUTIVE VICE PRESIDENT, AMERICAN PLYWOOD ASSOCIATION

SUMMARY

H.R. 5462 seeks to amend the Tariff Act of 1930 to permit Mexican softwood plywood to enter the U.S. duty-free until June 30, 1988—or longer if governments of the two countries so negotiate.

On behalf of the U.S. softwood plywood industry, the American Plywood Association strongly opposes the proposal.

The Association points out that while currently Mexican plywood shipments to the U.S. are small, H.R. 5462 could open the door to unfair competition from plywood producers in Mexico and many other countries. Under existing procedures there are provisions for countries qualifying for Less Developed Country (LDC) status to import plywood to the U.S. duty-free. If H.R. 5462 were enacted, safeguards for the U.S. plywood industry concerning the volume of such shipments would in effect be removed, and many other countries would want to follow the Mexican precedent.

On behalf of the American Plywood Association, which represents the producers of more than 81 percent of the structural panels made in the United States, I wish to express strong opposition to H.R. 5462 introduced by Congressman Livingston to amend U.S. Tariff Schedules so that Mexican softwood plywood could enter the U.S. duty free until June 30, 1988. We also oppose the intent of H.R. 5462 to grant Mexican softwood plywood duty-free status for a longer period "if governments of the two countries so negotiate."

BACKGROUND

Duty on Mexican softwood plywood imported into the U.S. is 20 percent, but Mexico has a Less Developed Country (LDC) status which permits it to ship plywood into the U.S. duty free until shipments exceed 50 percent of LDC totals.

In 1978, Mexico shipped $3.949 million worth of softwood plywood into the U.S.—out of a total $7.380 million by all LDC nations. Since 1978 Mexican shipments exceeded the 50 percent level of total LDC shipments, Mexico lost its LDC duty exemption in 1979 and all their shipments that year were subject to 20 percent duty.

Mexico's duty-free status was reestablished in 1980 and remains until shipments exceed 50 percent of total LDC shipments. An effort was made in 1983 to remove the 50 percent LDC restriction for Mexico but was unsuccessful.

In addition to tariffs, there are severe restrictions on the export of U.S. plywood to Mexico. Importers have rigid licensing requirements with added costs of as much as 35 pesos per kilo of product (about 70 cents/sq. ft. ⅜-inch basis).

Mexico's current duty on softwood plywood (BTN 44.15-A001) is made up as follows:

15 percent ad valorem plus; 3 percent of duty assessed plus; 2 percent export development fee.

Gross: 17.45 percent of Cost, Insurance & Freight (CIF)

IMPACT

The American Plywood Association concurs with the Mexican position that the volume of Mexican plywood imports into the U.S. currently represents a very small percentage of U.S. production. Estimated imports were 21.3 million square feet in 1983, for instance, in a year when total U.S. plywood production exceeded 19.6 billion square feet.

Our opposition to H.R. 5462 is, most of all, on the issue of precedent. Existing United States law and tariff practice already provide generous incentives for plywood producers in the less developed nations under the procedures governing LDC status.

H.R. 5462 would, in effect, set aside the reasonable provisions of the LDC tariff schedules—provisions which favor the less developed countries while also recognizing to some degree the needs of U.S. plywood producers.

Enactment of H.R. 5462 would encourage many other plywood producers in less developed nations around the world to follow the Mexican precedent. What is now only a small threat to the U.S. producer could develop into substantial unfair foreign competition.

Mexican producers also claim that their U.S. shipments are not directly in competition with American plywood, as most of their U.S. markets are in the furniture industry rather than the construction industry, which is the primary market for American producers.

The American Plywood Association has received an increasing number of reports from several key U.S. construction markets indicating that more Mexican softwood plywood is finding its way into American home building.

Enactment of H.R. 5462 would be an incentive for increasing Mexican and other foreign plywood production intended for the U.S. construction markets.

We oppose H.R. 5462 as unfair and capable of damaging our industry's domestic markets significantly, at a time when American plywood producers are struggling to recover from the worst recession in their history.

STATEMENT OF C. DONALD FISHER, VICE PRESIDENT, PUBLIC AFFAIRS, BOHEMIA INC.

Bohemia is a softwood products company of approximately 2,000 employees located in central Oregon and central California. We are particularly interested in this legislation since we operate two softwood plywood plants in Oregon. These plants directly employ 400-500 people plus supporting operations containing up to 200 more employees. Our employees' average wage is $13.25 per hour including all fringe benefits.

The softwood plywood industry in the United States is and has been in a recession for the last three years due to high interest rates and the subsequent housing slump. We already suffer from Canadian plywood imports in softwood due to the 20% discount of the Canadian dollar. As you must know, the Mexican peso has been drastically devalued since the oil surplus of several years duration.

Mexican softwood plywood would be in direct competition with us in the Arizona—Texas—California markets with a delivered cost of probably one-quarter to one-half of our current costs. Considering the state of our current plywood industry, Canadian imports, the housing situation, the entry of Mexican softwood plywood into our traditional markets might be the death knell for our western softwood plywood industry and the many small communities it supports.

We are totally against permitting Mexican softwood plywood to enter the U.S. duty free or without a considerable tariff.

FORT VANCOUVER PLYWOOD CO.,
Vancouver WA, May 3, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, House Committee on Ways and Means,
Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: The following statement is submitted to you by the President and Chairman of the Board of Fort Vancouver Plywood Company, Vancouver, Washington 98666, phone number (206) 694-3368. This statement is submitted on behalf of the owner/workers and families of Fort Vancouver Plywood Company.

We have a profound concern regarding Congressman Bob Livingston of Louisiana introducing HR 5462 which would amend the Tariff Act of 1980 to permit Mexican softwood plywood to enter the United States duty-free.

The plywood and lumber industry of the United States has been in an economic slump for the past few years. The first quarter of this year showed some signs of recovery but as of April 15, 1984, we have experienced a deep slide in the plywood market.

High interest rates deter house building which reduces lumber and plywood demand, which causes an inventory build up, which causes a slowdown in production, which also causes an increase in unemployment, which decreases tax revenues and increases deficit spending. Can we afford to compound the problem by increasing the supply of plywood by injecting an increase of lower cost plywood into the market?

Our recommendation is not to eliminate the duty on Mexican imports of plywood but rather to increase the duty both to Mexico and Canada or any other foreign country. Let's allow our products to be competitive. We realize that Congressman Livingston is concerned with the balance of trade. We are concerned with a balanced P&L.

Respectfully, Board of Directors.

Fred J. LeBouef, Jr.,
President.
Ben H. Yett,
Vice-President.
Robert M. White,
Secretary.
Alfred P. Stoeckel,
Treasurer.
Ray A. McInnis,
Board Member.
Pary Pariseau,
Board Member.
William L. Wascher,
Board Member.

Georgia-Pacific Corp.,
Washington, DC, May 17, 1984.

Hon. Sam M. Gibbons,
Chairman, Subcommittee on Trade of the Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Gibbons: You have requested that interested parties comment on H.R. 5462, a bill to afford duty-free treatment to certain softwood plywood imported from Mexico. We understand that you do not intend for the Subcommittee to take action on H.R. 5462—without first having heard oral testimony—if the bill proves to be controversial.

For the reasons set out below, we strongly oppose H.R. 5462.

Georgia-Pacific Corporation is a major forest products company and the leading producer of softwood plywood in terms of both volume and efficiency. Through our extensive distribution system, we serve softwood plywood markets in most areas of the United States, including the South and Southwest.

Although 1983 and early 1984 afforded Georgia-Pacific and other domestic plywood producers some relief from the severe effects of the 1980–1982 recession, the forest products industry is now suffering as a result of depressed plywood demand and prices. Uncertainty exists as to future interest rate levels as well as the ability of the housing industry to sustain satisfactory levels of activity. As a result, companies other than Georgia-Pacific have recently announced mill shut-downs which involve significant curtailments of plywood production. We are, therefore, extremely concerned about current efforts, as embodied in H.R. 5462, to exempt Mexican softwood plywood from the Generalized System of Preferences (GSP). The exemption which is sought would permit the duty-free importation into the United States of unlimited quantities of Mexican softwood plywood.

Title V of the Trade Act of 1974, 19 U.S.C. §§ 2461–2465, which established the GSP, is, unlike H.R. 5462, much more than a mere tariff reduction statute. While the GSP is designed to allow duty-free entry into the United States of eligible products from certain developing countries, the program incorporates important provisions designed to avoid injury to U.S. industry and to insure that the benefits of GSP are enjoyed by those countries which most need them.

Section 501 of the Trade Act of 1974, 19 U.S.C. § 2461, for example, requires that in extending GSP treatment to any eligible article, the President consider "the anticipated impact of such action on United States producers of like or directly competitive products." Moreover, once duty-free treatment is extended to any product such as Mexican softwood plywood, adverse impacts on domestic producers of like or directly competitive products can provide the basis for the President to suspend duty-free treatment for the product in question 19 U.S.C. § 2464. H.R. 5462 would, of course, grant Mexican softwood plywood a wholesale exemption from the foregoing provision of the U.S. trade laws.

Equally important, H.R. 5462 would exempt Mexican softwood plywood from the so-called competitive need limitation of the Trade Act of 1974. That provision of the law, codified at 19 U.S.C. § 2464(c), denies GSP treatment to articles from an otherwise eligible country which "has exported . . . to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year . . ."

The competitive need limitation was included in the GSP program for several important reasons: The competitive need formula is in general designed to provide an express requirement governing the withdrawal or suspension of preferential treatment in those cases when it can no longer be justified on the grounds of promoting the development of an industry in a particular developing country. The formula would also require the President to withhold the initial granting of preferential treatment to a particular developing country which has already demonstrated its competitiveness in the article in question. The formula is also designed to provide more opportunities to the least developed countries.

Comm on Finance, U.S. Senate, Report on H.R. 10710, Trade Reform Act of 1974, S Rep No 1298, 93d Cong, 2d Sess 227, reprinted in [1974] U.S. Code Cong & Ad News 7186, 7358.

We are unaware of any legitimate justification for the exemption from the U.S. trade laws which H.R. 5462 would extend to Mexican softwood plywood. Therefore, we would strongly urge you, Mr. Chairman, not to take any action on the bill unless and until the proponents of the bill have, in hearings before your Subcommittee, established the propriety of such extraordinarily preferential treatment for the product in question. In addition, we would respectfully request an opportunity to participate, ourselves, in any such hearings.

Very truly yours,

JOHN T. FERGUSON II,
Director, Government Affairs, International Trade.

STATEMENT OF JIM T. GOTCHER, KAIBAB INDUSTRIES, PHOENIX, AZ

SUMMARY

I am Jim T. Gotcher, President of Kaibab Distribution Company, a division of Kaibab Industries, headquartered in Phoenix, Arizona. This statement is in support of H.R. 5462, a bill to amend the Tariff Act of 1930 to provide duty free imports of plywood from Mexico. Based on the quantity of plywood imported to the U.S. for the past five years, the limited market area in which the plywood is sold, the employment opportunities resulting from manufacture, and use of the commodity in the U.S., we feel that duty-free treatment will not harm U.S. producers of similar plywood products.

IMPORT HISTORY

Kaibab Industries has been one of two U.S. companies which import Mexican forest products for wholesale and retail distribution in the U.S. Over the past 12 years we have developed a stable base of customers who have come to depend on Mexican plywood as a part of their product mix. These customers are primarily located in the Southwestern United States.

The product is unique in that it is a high quality pine plywood not readily available in the U.S., and is favorably accepted over other similar plywood products.

At this time, a limited amount of Mexican plywood is eligible to enter the U.S. duty free under the Generalized System of Preference. Even with this advantage, the amount imported over the past five years has averaged less than one percent of domestic production. Mexico has exported to the U.S. less than 50 percent of the total plywood imported by the U.S., although the TSUS category includes plywood products which are not destined for the same end use.

SOCIAL, ECONOMIC, AND POLITICAL IMPACTS

Most producers of Mexican plywood are located in the mountainous states in the northern part of Mexico . . . historically an economically poor section of the country. By maintaining a healthy forest products industry in that country, jobs are provided for Mexicans in Mexico, especially in those areas near the U.S. border which are vulnerable to immigrant worker problems. Mexican producers by plant machinery and logging equipment from U.S. manufacturers, thus establishing markets for U.S. goods. Transporting the finished product to the nearest customer (the Southwest U.S.) has provided Mexican producers with efficient marketing, customers who pay U.S. dollars, and strong favorable international relations between the two countries. As this industry developes in Mexico, it will contribute to the country's balance of payments to the U.S., and enable exploration for export markets with other countries, rather than relying solely on the U.S.

Allowing duty-free treatment for a short time, as H.R. 5462 provides, would enable the Mexican producers to stabilize its industry, its labor force, and export marketing opportunities. When these capabilities occur, the Mexican industry should be able to compete world-wide, and the negotiated duty rate provided for in H.R. 5462 could be fairly evaluated, especially if the Harmonized System is in place.

DOMESTIC POLICY

Kaibab Industries believes in the spirit of free trade. H.R. 5462 seems in concert with the domestic industry's efforts to lower tariff barriers for *its* products abroad, such as the long-term project regarding lowering trade barriers for wood products entering Japan. If we pursue open markets in other countries, it is reasonable that other countries should expect access to ours.

O'CONNOR & HANNAN,
Washington, DC, May 18, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives,
Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: In response to the release #36 of the Subcommittee on Trade of April 23, 1984, I am submitting this communication in support of H.R. 5462, a bill to amend the Tariff Act of 1930 to provide that certain imports of plywood be admitted free of duty. I do so in my capacity as Counsel to the Mexican Plywood Producers Association.

This letter is submitted at this time in conformance with the release requesting views and in lieu of a more complete statement which we had hoped to submit. However, in recent weeks there has been a strike in the plywood industry in Mexico. Negotiations of a new labor contract have prevented completion of a full explanation of the conditions which support the bill's favorable consideration by the Committee on Ways and Means. The President of the Mexican Plywood Association and some of his colleagues in the industry will be in Washington next week, and we will submit a complete statement on H.R. 5462 for consideration by the Subcommittee on Trade and the Committee on Ways and Means by May 25.

H.R. 5462 would reclassify imports of plywood, with face ply of softwood from Mexico, presently dutiable under a basket classification, TSUS item No. 240.21, by creating a new item number and description applying solely to imports of plywood with a face ply of Mexican pine (with the species enumerated in the item description). The same rates of duty in columns 1 and 2 presently applicable to imports under item 240.21 would apply to imports under the new item, i.e., 20 percent and 40 percent ad valorem, respectively.

H.R. 5462 also provides for the immediate suspension of the column 1 rate of duty of 20 percent ad valorem under new item 240.20 to June 30, 1988. This period of time from the date of enactment to June 30, 1988 would provide the opportunity for the negotiation of a U.S.-Mexico trade agreement with an exchange of mutually beneficial trade concessions.

Such an agreement, as authorized by H.R. 5462, could provide the United States with greater access in Mexico's markets for forest products and thereby gain reciprocal benefits for U.S. producers in exchange for a trade agreement rate applying to imports of plywood from Mexico. While the bill would permit the President to bind the duty free treatment of Mexican plywood imports, the President could establish a higher trade agreement rate, depending upon the nature of the exchange of concessions with Mexico. In other words, in order for a rate of duty more favorable to imports of plywood from Mexico than the existing 20 percent to continue to apply after June 30, 1988, the bill would require that a trade agreement containing an exchange of trade concessions would have to become effective by that date.

The approach of H.R. 5462 addresses both a classification and a marketing problem Mexican plywood producers face in selling in the United States. Imports of plywood with a face of softwood under the existing TSUS item 240.21 are subject to the rather high rate of duty of 20 percent because the rate has historically applied to imports of such plywood from Canada. In fact, a rate of duty of 8 percent in lieu of the 20 percent was agreed to in the Tokyo Round, but that reduction was made subject to a separate agreement between the United States and Canada on a North

American standard definition of softwood plywood. No such agreement has been reached, and the date of duty under item 240.21 has remained at 20 percent.

Since Mexico and the United States have not successfully negotiated and implemented a trade agreement in recent years, there has been no opportunity for Mexican plywood producers to seek through the Government of Mexico a lower U.S. rate of duty in the context of a trade agreement.

Despite the maintenance of the 20 percent rate of duty, due to the potential supplier position of Canada, imports from beneficiary developing countries are eligible for GSP treatment under item 240.21. Mexican plywood manufacturers have benefited from the duty free treatment of GSP, but under the pattern of imports, the 50 percent (supplier) competitive need test effectively keeps such duty free exports from Mexico at very low levels of $4 million, or much lower when the duty free treatment is withdrawn under the GSP program.

The plywood exported from Mexico is of high quality and demands a premium price, mostly from U.S. furniture manufacturers. However, it is extremely difficult under these conditions, if not impossible, for Mexican plywood manufacturers to assume a stable supplier position in the multi-billion dollar United States market, where all imports of softwood plywood supply less than one percent of consumption.

In view of the constant threat of losing GSP duty free treatment, the Mexican plywood prodcuers are seeking a separate classification of their own species of softwood plywood, species not grown in Canada, and for the most part, species only grown in Mexico. In addition, these producers are seeking a more reasonable market access than posed by the 20 percent rate of duty.

Given the tremendous size of the U.S. market for softwood plywood and the proven competitive abilities of American plywood producers, who export in excess of $100 million annually, the enactment of H.R. 5462 constitutes no threat to the domestic plywood industry. However, as indicated above, we request the opportunity to present further information and analysis by May 25. Such evidence will demonstrate the benefits to United States buyers of Mexican softwood plywood and their customers to be gained from the increased access to the American market, and also will demonstrate the absence of any disadvantage to the producers of softwood plywood in the United States.

We have discussed the position of the Mexican plywood producers with trade officials in the Executive Branch. While they have taken no formal position of the bill, we were informed that the Administration favors the implicit aproach of the bill of obtaining reciprocal and mutually beneficial concessions when greater access to the U.S. market is being considered. It is in the interest of both countries to pursue such trade agreement opportunities.

On behalf of the Mexican Plywood Producers Association, I respectfully request that the above comments and the additional statement to be submitted be brought to the attention of the members of the Committee on Ways for their favorable consideration at the appropriate time.

Should you have any immediate questions concerning the issues raised in this letter, please contact Harry Lamar, Monticello Associates, phone 466-5490.

Sincerely yours,

JOSEPH H. BLATCHFORD

STATEMENT OF VINCENT MARTIN, CHAIRMAN, POLITICAL ACTION COMMITTEE, MT. BAKER PLYWOOD, INC.

We at Mt. Baker Plywood, Inc. in Bellingham, WA are a small plant formed in 1950; with 240 employees. The thought of allowing Mexican Plywood into the U.S. duty free is nothing but replusive to us and should in our opinion not be permitted.

With interest rates going up to further slow down the housing industry now is not the time for relaxing any type of duty on forest products entering the United States.

Certainly with our high unemployment all across the country HR 5462 is a step in the wrong direction.

Congressman, Bob Livingston can be more helpful to the American people whom he represents by a little effort on his part in the direction of encouraging the pacific rim countries to purchase our finished forest products rather than in the direction he now proposes.

Respectfully submitted.

[From Bellingham Herald, May 5, 1984]

HUNDREDS TRY FOR A FEW JOBS

SALEM, Ore. (AP)—The chance to apply for one of a handful of jobs at Boise Cascade Corp's Salem container plant lured hundreds of people out Friday to stand in line for several hours in damp, cool weather.

A clerk at the Executive Inn, where the applications were taken, said some applicants were waiting when she arrived at 6 a.m. Applications were accepted starting at 1 p.m.

Three to seven people will be hired in July, said Dean Mitchell, plant general manager. The plant now has 58 hourly and 23 salaried workers.

MULTNOMAH PLYWOOD CORP.
St. Helens, OR, May 14, 1984.

JOHN J. SALMON,
Chief Counsel, House Committee on Ways and Means,
Longworth House Office Building, Washington, DC.

DEAR SIR: This letter is being written by W.W. Ezzell, P.O. Box 599, St. Helens, Oregon 97051. The telephone number where I may be reached is 503-397-4300. I am the President of Multnomah Plywood Corporation, a worker owned cooperative.

I am pragmatically opposed to HR 5462 which would amend the Tariff Act of 1930. The present condition of the softwood plywood industry, particularly the Douglas Fir Plywood segment of this industry, is close to terminal. The infusion of additional volume without the protection of a tariff would render our situation impossible.

If one needs evidence of the effect of more products of this nature on the market, then one need only study the grading changes that have allowed Southern Pine plywood to compete on an equal basis with Douglas Fir.

In addition, we feel that the intrusion of Mexican softwood into the market place would only further reduce our ability to market the huge backlog of timber under contract in the Western Douglas Fir Region.

In summary, for those reasons stated above, we highly recommend, in fact insist, that legislation of this nature not be passed by Congress. Any further dilution of this market, which is very delicate and fragile at this point, would strike the final blow and result in extinction of our industry.

Sincerely,

W.W. EZZELL,
President.

STATEMENT OF WILLIAM SWINDELLS, JR., PRESIDENT AND CHIEF EXECUTIVE OFFICER, WILLAMETTE INDUSTRIES, INC., PORTLAND, OREGON

Willamette Industries, Inc. is a medium-sized integrated forest products firm that makes a variety of wood and paper products at 57 plants in 14 states.

Among other products, our Building Materials Group makes Douglas fir plywood in Oregon and southern pine plywood in Louisiana. Markets for both of these products would be adversely affected by the passage of H.R. 5462.

Last year, the American panel industry produced a record number of structural panels. With high interest rates putting a damper on housing starts and industrial construction, plywood prices were depressed in a market awash with product. Building materials prices remain at low levels today, and within the past two weeks, several building materials manufacturing facilities here in Oregon have announced curtailments, putting hundreds of Oregonians temporarily out-of-work. A similar threat exists in the Louisiana area of our operations.

Eliminating the tariff on Mexican plywood would only increase the supply of panels, exacerbating an already bad market condition. A loss of American jobs and production facilities could easily be the result in this current soft market.

Allowing one lesser developed country (LDC) to enjoy a tariff-free status on plywood above the current 50 percent limitation will set a dangerous precedent for other LDC's demanding equal treatment with Mexico, and may result in capacity expansions in Mexico and other LDCs.

Mexico currently charges a 40 percent duty on plywood coming into Mexico from the U.S. plus stiff additional non-tariff charges to restrict entry. Allowing Mexico to import plywood duty free is allowing unreasonable competition for U.S. plywood producers. I urge you to table further discussion of H.R. 5462.

H.R. 5469

To amend the Tariff Schedules of the United States in order to establish equitable duty rates for waterbed mattresses, liners, and parts thereof.

SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.,
New York, NY, May 17, 1984.

Re Statement in Opposition to H.R. 5469.

JOHN J. SALMON, Esq.
Chief Counsel, Committee on Ways and Means,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR SIR: The attached statement in opposition to H.R. 5469, a bill "to amend the Tariff Schedules of the United States to establish equitable duty rates for waterbed mattresses, liners and parts thereof," is submitted by the law firm of Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of our client, Intex Corporation, a United States manufacturer of polyvinyl plastic sheet and film, and an importer of waterbed mattresses and liners from the Far East.

The statement opposes passage of H.R. 5469. A decision by the U.S. Government to increase the rate of duty on these articles, would be contrary to all basic principles of free and fair trade; would invite retaliation from our trading partners; and is totally unnecessary, given the U.S. industry's ability to achieve substantial profits in a period of continued growth. In the absence of a formal finding that this industry is being seriously injured by imported products, the Committee on Ways and Means should recommend that this bill not be enacted into law.

If the Committee has any additional questions regarding these comments, please contact the undersigned at our New York office.

Respectfully submitted,

GAIL T. CUMINS.

Attachments.

STATEMENT ON BEHALF OF INTEX CORP. IN OPPOSITION TO H.R. 5469

These comments are submitted on behalf of our client, Intex Corporation, in opposition to H.R. 5469 which, if enacted, would increase the ad valorem duty applicable to imported waterbed mattresses and waterbed liners from the current rate of 2.4 percent ad valorem to a rate of 40 percent ad valorem.

Intex Corporation, a United States company which has its headquarters offices in Long Beach, California, and a 700,000-square-foot plastics calendering facility in Corinth, Mississippi, employs over 600 American workers in the production of polyvinyl plastic sheet and film, and wall coverings, and the development, marketing and sales of various plastics products and toys manufactured in the Far East. Included among the products imported by Intex are waterbed mattresses and liners produced in Taiwan.

If enacted into law, H.R. 5469 would have its desired effect: Intex Corporation and other waterbed mattress and liner importers would be prevented from importing these products into the United States, and those companies assembling waterbed mattresses and liners in the United States would have created an entirely closed market, free from all foreign competition. In the case of Intex Corporation, such a result would adversely affect its profitability and its ability to manufacture plastics at Corinth, Mississippi.

A decision by the United States to increase an import duty rate by 1667 percent—in the absence of any finding that the imported product has materially injured an American industry, either through fair or unfair competition—would be a clear signal to our trading partners that the United States has abandoned any intention to act in accordance with our international treaty obligations, and would invite retaliatory action against all products which American producers wish to sell abroad. If American waterbed mattress and liner assemblers are being adversely affected by import competition, they have the right to pursue their claims under various effective provisions of U.S. law, and subject their industry to formal factual findings of injury by the International Trade Commission. For example, whenever the Commission determines that increased importations of an article have been a substantial cause of serious injury or threat of serious injury to a domestic industry, the President, subject to congressional review, and in accordance with Section 203, Trade Act of 1974, can increase the duty rates applicable to, or impose quantitative restraints on, the imported article.

In the absence of such a finding of injury or of an injury determination rendered pursuant to U.S. law regarding unfair competition, any decision by the U.S. Government to increase a rate of duty—without provocation and solely in response to a desire to completely eliminate all foreign competition—would undoubtedly result in our trading partners questioning our Government's oft-repeated commitment to principles of free and fair trade. Justified retaliation would result; American exporters would be injured; and an unnecessary trade war would be unleashed.

While the above-referenced general principles should provide sufficient reason for this Committee to reject H.R. 5469, a review of conditions of competition in the U.S. waterbed industry reveals that this industry has absolutely no need for the protection which would result from an increased duty rate.

In a petition dated June 1, 1983, the Waterbed Manufacturers Association (WMA) advised the Trade Policy Staff Committee (TPSC) that WMA members had experienced a period of extraordinary growth and prosperity during the past 8 years. From 1975 through 1982, domestic waterbed mattress production increased 767 percent from 263,000 to 2.3 million units; sales revenue increased 718 percent from $7.9 million to $65 million; and gross profit increased 1302 percent from $1 million to $14.5 million. In 1982, the domestic industry experienced the most profitable year in its history, with gross profit as a percentage of sales reaching 22.24 percent, 28 percent greater than the average for the prior 5-year period. And in 1982, the domestic industry utilized 54 percent of its continuously expanding production capacity, the highest capacity utilization rate in history.

Thus, by its own admission, the domestic industry is prospering, a result which is further evident from reviewing an article entitled "Waterbed Sales Increase 18 Percent", which appeared in the October 1983 Waterbed Magazine (at page 40), attached hereto as an Exhibit. In an industry where several manufacturers "don't even have an inventory and are shipping directly from the production floor", it is ludicrous to deprive American consumers of waterbeds and waterbed liners by eliminating imports by imposing a 40 percent rate of duty.

Based on these facts, it is not surprising that members of the domestic waterbed industry have chosen to eschew traditional methods of seeking import relief and, instead, have proceeded directly to Congress in hopes of convincing their Representative or Senator that duty rates should be increased. Clearly, these waterbed assemblers—who may themselves be substantial importers of the component materials comprising 60 percent of the value of a waterbed mattress—should not be allowed to succeed. The desire of a few businessmen to realize extraordinary profits by convincing Congress to effectively prohibit all import competition should not be allowed to prevail over the American consumer's need to purchase a quality product at a competitive price; American exporters' needs to increase employment opportunities for American workers through shipments abroad; the manner in which our trading partners perceive the United States' commitment to its stated objectives of free and fair trade; and the traditional American economic policy of fostering competition among all businessmen who compete fairly in our marketplace.

In sum, in the absence of any formal finding, required by law, that the U.S. waterbed and water mattress industry is being adversely affected by reason of imports, and in view of the substantial evidence that this industry is experiencing unprecedented growth and prosperity, H.R. 5469 should not be enacted into law.

Intex Corporation thanks the Committee for the opportunity to submit these comments and will gladly submit additional evidence in support of its position upon request.

Waterbed sales increase 18 percent

More than two million waterbeds were sold in the United States in 1982, an impressive increase of 18 percent over 1981, according to the latest Facts Consolidated survey of waterbed manufacturers. The results indicate manufacturers' sales of nearly $800 million and retail sales of over $1.5 billion for the waterbed itself, related furniture items, linens and bedding, heaters, chemicals, and accessories.

Total 1982 sales of innerspring and other conventional bed sets are reported to have declined by at least 5 percent in unit volume, permitting waterbeds to make an even deeper penetration into the sleep equipment market. In 1982, there was approximately one waterbed sold for every five conventional mattress sets. Rapidly rising waterbed sales in late 1982 and early 1983 suggest that waterbeds will make an even deeper market penetration this year since conventional bed set sales are reported still to be sluggish.

For the first time, survey results were adequate to permit tentative updated measurements of the proportionate sales of major waterbed components.

The preliminary market survey results released in San Francisco at the WMA Convention, estimated that waterbed sales at retail in 1982 reached $1.5 billion, an increase of 17 percent. This figure was based largely on a telephone survey of leading manufacturers of vinyl watermattresses and heaters and on other supplementary sources and factors.

More complete figures now indicate the sales of watermattresses alone rose more than 21 percent, as did the largest dollar waterbed component, frames and casegoods. The $1.5 billion figure is now believed to be a little low, but figures still do not reach $1.6 billion. Since watermattress sales increased strongly toward the end of 1982, not all of that merchandise would yet have been reflected in total 1982 waterbed sales at retail. However, this does brighten the prospects for further record sales at retail, as late 1982 production moves into dealers' hands. And with early 1983 sales of watermattresses still rising, this could signal still another banner year. Several manufacturers reported that they don't even have an inventory and are shipping directly from the production floor.

Sales of vinyl watermattresses and liners are believed to account for about 11 percent of total waterbed sales. ◆

TABLE I

Estimated Sales of Waterbed Components 1982

Component	Percent of total	Retail Sales ($Mil)	Mfrs' Sales ($Mil)
Frames and casegoods	62.5	$ 937	$498
Vinyl mattresses and liners	11.0	165	86
Soft-sides (hybrids)	5.0	75	40
Bedding	10.0	150	80
Heaters	5.5	82	44
Chemicals and kits	4.0	60	32
Accessories and misc	2.0	30	16
Total Waterbed Sales	100 percent	$1,500	$798

TABLE II

Types and Average Prices of Watermattresses Sold

Type of watermattress	Percent of Total		Average Price
Total — All Types	100.0		$34.21
Not baffled	40.5		
For Conventional waterbeds	93.7	100.0	$33.62
Not baffled	38.9	41.5	22.81
Baffled	54.8	58.5	41.30
For soft-sided beds	6.3	100.0	$42.98
Not baffled	1.6	25.4	35.05
Baffled	4.7	74.6	45.68

Statement of Raymond P. Delrich, Executive Director, Waterbed Manufacturers Association

SUPPORTERS OF H.R. 5469

Air Bed, Inc. San Jose, CA; Albrass Enterprize Los Angeles, CA; Allen & Associates Fountain Valley, CA; American National Watermattress Corp. Orange, CA; American Thermo-Seal, Inc. Gardena, CA; America The Elegant, Inc. Santa Ana, CA; Amtec Flotation Sleep Systems Pacoima, CA; Arizona Woodcraft, Inc. Phoenix, AZ.

Blue Magic Products Stockton, CA; Branwood Manufacturing Phoenix, AZ; Calco Imports-Exports, Inc. Gardena, CA; California Concepts Compton, CA; Catalina Furniture Los Angeles, CA; Classic Corporation Jessup, MD; Custom Designs Buena Park, CA; Daydream Designs Anaheim, CA; Del-Astra Industries, Inc. Stockton, CA.

E & S Vinyl Santa Ana, CA; E.D.D.E.-Wavemaster Santa Ana, CA; Electrofilm, Inc. Valencia, CA; Evans Mfg. Fremont, CA; Everbest Corp. Baltimore, MD; Goss Plastic Film Corp. Los Anteles, CA; Halkey-Roberts Corp. St. Petersburg, FL; Hold A Fold Chicago, IL; Icelandia Chico, CA; Kalex Chemical Products, Inc. Yardville, NJ; Kohkoku USA, Inc. Everett, WA; Ko-Wal Industries Temple City, CA; Kuss Corp. Findlay, OH; Lorts Mfg. Co., Inc. Tolleson, AZ.

Makers Mark-Morgan Wood Cloverdale, CA; Makers Mark-Morgan Wood Cloverdale, CA; Merada of San Francisco San Francisco, CA; Mid-Western Wood Products Springfield, OH; Monterey Manufacturing Carson, CA; Morgan Flotation Systems, Inc. Los Angeles, CA; N.C. Agency (U.S.A.) Antioch, CA; New World Mfg. Inc. Cloverdale, CA; Oak Tree Furniture Co. Santa Fe Springs, CA; Pacific Frames, Inc. Los Angeles, CA; Pantasote Corp. Passaic, NJ; George R. Putnam & Co. Atlanta, GA; RC Industries Pomona, CA.

Relax Technology Union City, CA; S.D.C. Manufacturing Bellflower, CA; S.R.H. Industries, Inc. Crystal, MN; Safeway Products, Inc. Middletown, CT; Sahara Industries, Inc. Goodyear, AZ; Sheer Comfort Inc. San Jose, CA; Shorecrest Mfg. Long Beach, CA; Slumber Perfect Products Houlka, MS; Strobel Mfg. Jeffersonville, IN; Tite-Nites Inc. Redondo Beach, CA.

United States Watermattress Co. Hanover, MD; Vinyl Products Mfg., Inc. Carson City, NV; Vylanta Corp. Atlanta, GA; Waterbed Frame Mfg. Co. Chicago, IL; Watercloud Bed Co. Huntington Beach, CA; Waterworth, A. California Corp. Lawndale, CA; Wave Wood Mfg., Inc. West Valley City, UT; Westwood Mfg. Sun Calley, CA; Woodstock Long Beach, CA; Wright's Furniture Mill Provo, UT; Traub Mfg. Co. North Bend, OR.

SUMMARY

The American manufacturers currently competing in the U.S. waterbed market are the industry's pioneers worldwide. The industry originated in this country, and our manufacturers continue to be leaders in design and production technology. The domestic market for waterbeds is growing at a rapid pace, but domestic manufacturers are losing sales to imports manufactured in countries such as Taiwan and Mexico where direct wage rates are $1.25 per hour and lower. In the last three years, imported waterbed liners have jumped to 63 percent of the U.S. market; we expect that number to reach 80 percent this year. More importantly, the offshore producers have now begun to expand their target to include the mattress market. We estimate that 20 to 30 percent of the mattresses sold today are imported; two years ago there were no imports of mattresses.

From the inception of the waterbed industry until 1982, imported waterbed mattresses and liners, manufactured principally in Taiwan of PVC plastic, were classified as mattresses; the current tariff on mattresses is 9.4 percent. On July 26, 1982, the Customs Service determined that these products were not mattresses and concluded that they should be classified under a "basket category" as parts of furniture; the current tariff on that classification is 2.4 percent.

In recent years, however, the tariff classification of waterbed liners and mattresses has not been a critical issue, for most imports have entered the United States without duty under the Generalized System of Preferences. On June 1, 1983, the Waterbed Manufacturers Association filed with the Office of the United States Trade Representative a petition seeking the immediate withdrawal of these products from the GSP list. On March 27, 1984, the Office of the United States Trade Representative announced that the WMA petition had been granted and that, effective March 30, 1984, waterbed mattresses, liners and parts thereof would be assigned a new tariff classification, TSUS 727.5300, which would be ineligible for duty-free entry under the GSP.

H.R. 5469 would raise the duty on these products to 40 percent ad valorem, a level which is equitable and which does not foreclose foreign products from continued access to the U.S. market. The measure is "protectionist" only to the extent that it may permit the domestic manufacturing industry to continue to exist. A 40 percent duty does not give American companies a cost advantage, but rather merely reduces the currently insuperable cost advantage enjoyed by foreign producers. More importantly, H.R. 5469 would not, in WMA's opinion, add significantly to the price of waterbeds paid by consumers because we have reason to believe that many retailers may not have passed on to consumers, in the form of lower prices, the savings they enjoy by reason of their purchases of lower-priced imports.

Domestic manufacturers built this industry out of nothing and will not stand idly by and watch its demise. If a fair tariff is not imposed, these companies will move offshore themselves. Indeed, several have already done so. In the end, the thousands of Americans employed in this industry will be the losers.

Recommendation: The Waterbed Manufacturers Association and each of those companies listed in this support statement respectfully urge the Subcommittee's favorable consideration of H.R. 5469.

STATEMENT

H.R. 5469 is supported fully by each of the companies on whose behalf this statement is submitted. While the majority of those companies are members of the Waterbed Manufacturers Association (WMA), the noted supporters of H.R. 5469 also include a number of companies which are not members of the Association.

H.R. 5469 would increase the duty rate on waterbed mattresses and liners from the current level of 2.4 percent to 40 percent ad valorem. The WMA members who support this legislation account for approximately 90 percent of the domestic manufacture of those products.

Not all of WMA's members produce mattresses and liners, however. Other end products include furniture, heaters, accessories, linens, hardware, bed frames and wall decorations. Each of those segments of the industry, through its membership in WMA, supports H.R. 5469. Without this much needed tariff increase, the domestic manufacturers of waterbed mattresses and liners will be forced to close their doors, leaving several thousand Americans unemployed.

While some may label this legislation "protectionist", it does not deserve the negative connotation which generally accompanies that term. H.R. 5469 would protect American jobs in an industry founded and nurtured in America, but it would do so without excluding foreign products from the U.S. market. A 40 percent duty could raise the wholesale price of an imported king size watermattress to approximately $16.53. The comparable domestically produced mattress costs the U.S. manufacturer (before profit) approximately $17.40; the price to retailers would approach $21.00. Thus, were a 40 percent duty imposed, an American retailer could still purchase the imported product for less than the domestic product. The presence of that duty, however, would make the domestic product more competitive and would enable the domestic waterbed mattress industry to continue to operate.

THE WATERBED INDUSTRY

Waterbed mattresses and liners, the products addressed in H.R. 5469, are made of polyvinyl chloride (PVC) plastic sheeting. A liner is typically a single sheet of PVC plastic with welded corners; the liner serves a a layer of protection between the mattress and the bed frame. Liners are sold at retail from $6.00 to $20.000 per unit.

The mattress itself is also manufactured from PVC sheeting. Rolls of the sheeting are cut to a desired configuration and then, through the use of various heat-sealing procedures, formed into a mattress which will hold water. The cutting and welding processes are very labor intensive and, due to the characteristics of the vinyl, are not susceptible to automation or the use of robots. A basic king size waterbed mattress retails for $40 to $150.

The waterbed industry was born in the United States about 15 years ago. It was then, and continues to be, an industry characterized by small to medium-sized companies founded and operated by entrepreneurs who took a risk on what, in the 1960's was considered a fad market. During the early and mid-1970's this small group of American entrepreneurs invested their time and financial resources, most often without earning a profit, to convince the American consumer that the waterbed was not a passing fad. By the end of the 1970's that effort had paid off. The waterbed industry had become accepted as a legitimate segment of the bedding industry. Indeed, for every 100 mattress sets sold in the United States in 1983, at least

18 were watebeds. Manufacturers of waterbed mattresses and liners, literally 2- and 3-person shops in the late 1960's, employed in excess of 2,000 workers in 1983.

Unfortunately for those entrepreneurs and their employees, several manufacturers of plastic inflatible products located in Taiwan saw the dramatic increase in the U.S. waterbed market as an opportunity to expand their product line. Realizing that the manufacture of waterbed mattresses and liners was labor intensive and required technology no different than that which they already employed, they began to produce waterbed liners. By 1982, 67 percent of the waterbed liners sold in this country were manufacturered abroad, primarily in Taiwan. In an expanding market, domestic manufacturers' sales were plummeting.

Having captured virtually the entire liner market, the offshore manufacturers then turned their attention to waterbed mattresses. Imported mattresses accounted for a negligible percentage of the U.S. market in 1982. By 1983, however, imported mattresses, again primarily from Taiwan, were valued at approximately $23.5 million, or 21 percent, of the total U.S. market of $112 million. Together the Taiwanese and Mexican facilities already in production have the capacity to supply a market several times the size of the U.S. market. Absent the imposition of a reasonable duty, it is not unreasonable to predict that domestic producers will disappear within serveral years.

While the U.S. market is expected to grow in 1984, the domestic producers' share of that growing market will decrease. As market share decreases, the downward pressure on prices generated by less expensive imports will result in increased losses by the domestic industry. In an effort to survive, a number of companies have already gone offshore. If H.R. 5469 is not enacted, more will follow. American workers, a number of whom have already been laid off, will be the losers in the end.

The Offshore Advantage

Most disturbing to American manufacturers is the fact that they are virtually helpless in the face of offshore competition which arose only after the U.S. market was developed. Those who support H.R. 5469 endured the unprofitable start-up phase of the waterbed industry in this country. They refined waterbed design, improved production technology and convinced the American consumer to accept the idea of flotation sleep. Now, after that groundwork has been completed, manufacturers in Taiwan and Mexico, taking advantage of their insuperable cost advantage, have stepped into reap the benefits which legitimately belong to the American developers of the industry.

The American waterbed market, by far the largest in the world, continues to grow, but domestic manufacturers are losing sales to imports at an increasing rate. The attraction of the imported product to American wholesalers and retailers is fundamental: price. Producers located in Taiwan and Mexico, enjoying substantial material and labor cost advantages, are able to wholesale their products in the U.S. for less than it *costs* an American company to manufacture comparable products. In other words, the offshore manufacturer's price for products delivered in the U.S., which price includes profit, is less than domestic production *cost*.

For example, a king size waterbed mattress which costs the average domestic company $17.40 to produce, costs the Taiwanese only $9.74. Taiwanese companies have offered to sell these mattresses in the United States for $12.00 per unit. Attached as Exhibit A is a cost comparison which shows the $2.96 material cost advantage, the $2.25 labor cost advantage, and the $3.12 overhead cost advantage enjoyed by the Taiwanese. One sees a total cost advantage of $7.66 on a product which the Taiwanese offer for sale at $12.00. The American manufacturer's cost exceeds the Taiwanese price by $5.40, or 45 percent of that price. Were a 40 percent duty applied to the hypothetical customs value of $11.33 ($12.00 invoice price minus $.67 transportation cost), an additional $4.53 would be added to the wholesale price, bringing it to $16.53, an amount still less than the American producer's cost.

If cost comparisons are made for waterbed liners and queen size mattresses, the results are the same. The Taiwanese have offered king size liners for $2.22 delivered in the U.S.; the comparable product costs the domestic manufacturer $3.32. A queen size mattress which costs the U.S. producer $16.00 to produce is being offered for sale by a Taiwanese manufacturer at $11.34.

Clearly then, the domestic industry is at a competitive price disadvantage. The reasons for that disadvantage are several. First, the offshore competition comes not from small businesses, but rather from corporate giants. Intex Plastic Sales Co. is a subsidiary of Long Beach, California-based Intex Corp., a conglomerate with estimated annual sales of $125 million. Intex Plastic, which manufactures waterbed mattresses and liners in Taiwan, predicts that it alone will have 50 percent of the U.S. waterbed business by 1986.

The Mexican manufacturer of waterbeds is a subsidiary of Ohio Mattress Co., the world's second largest bedding manufacturer. We understand that Ohio Mattress' Tijuana, Mexico, facility currently produces waterbed liners and parts of mattresses. With additional equipment, however, that single facility is large enough to support the production of enough waterbed mattresses to supply up to 40 percent of the entire U.S. market.

If the size of the offshore competitors were the only obstacle confronting the domestic industry, a tariff increase might be neither necessary nor warranted. Labor, material, and overhead advantages enjoyed offshore are the factors which weigh heavily in favor of a tariff increase.

A WMA survey in 1983 determined that the average direct hourly wage paid to domestic workers in this industry is $5.29. This figure does not include any amount for employer-paid benefits. By comparisoln, the Taiwanese waterbed industry workers are paid $1.00 per hour and less. The Mexican workers are paid approximately $1.25 per hour and less. Stated differently, the amount that the average Taiwanese or Mexican employee is paid for his 48 hour work week is little more than that paid to an American employee for a single 8-hour shift. Even the U.S. minimum wage level is more than three times the labor rate paid by offshore manufacturers. In an industry in which labor accounts for almost 20 percent of total production cost, a 500 percent labor cost advantage is significant.

The offshore material cost advantage is even greater than the labor cost advantage. A king size mattress requires approximately 14.2 pounds of vinyl. In 1983, domestic waterbed manufacturers paid $0.67 per pound, or $9.58, for the domestic vinyl necessary to produce a mattress. In Taiwan, the price was $0.49 per pound, or $7.00. Today, the prices are approximately $0.10 per pound higher. In Mexico, the price lies somewhere between $0.60 and $0.67 per pound. A 28 percent material cost advantage is extremely significant in an industry in which approximately 60 percent of the cost of production is attributable to material.

Finally, the Taiwanese manufacturers' overhead advantage is significant due to the virtual absence of workmen's compensation, unemployment, social security, and other similar contributions which are required of employers in this country. While some employee taxes exist in Mexico, they are significantly less than those paid in the United States.

To summarize, the offshore cost advantage is insuperable and is not likely to change. The Taiwanese, able to charge less and still make a profit, have captured virtually the entire waterbed liner market. Unless the duty rate is increased, the waterbed mattress market will soon be lost as well.

History of Tariff Treatment

Until quite recently, all waterbed mattresses and liners entering the United States from aborad were classified under TSUS 727.8630 as mattresses of other than cotton. The current rate of duty on that classification is 9.4 percent ad valorem.

On July 26, 1982, however, the Customs Service changed its position, concluding that waterbed mattresses and liners were not mattresses, but rather were "parts of furniture, not specially provided for, of rubber or plastics," under TSUS 727.5000. The current duty on that classification is 2.4 percent ad valorem.

Because both customs classifications were eligible for preferential treatment under the Generalized System of Preferences, and the sources of waterbed mattresses and liner imports were countries eligible for duty-free entry under the GSP, no duty was assessed upon those goods.

On June 1, 1983, the Waterbed Manufacturers Association filed a petition with the Office of the U.S. Trade Representative seeking the removal of waterbed mattresses and liners from the list of goods eligible for the GSP. On March 27, 1984, U.S. Trade Representative William Brock announced that the WMA petition had been granted. Thus, effective March 30, 1984, waterbed mattresses and liners were assigned a new tariff classification, TSUS 727.5300, and goods entering the country thereunder are not eligible for GSP treatment, but rather are to be assessed a duty of 2.4 percent ad valorem, the same rate as would have been assessed under TSUS 727.5000.

Effective of H.R. 5469

Were the tariff on waterbed mattresses and liners to be raised to 40 percent, WMA submits that the ability of offshore manufacturers to capture the entire U.S. market would be reduced, but their ability to compete effectively in this country would be unaffected. After assessment of a 40 percent tariff, the price of the imported product to retailers would still be less than that which could be quoted by a domestic manufacturer. The domestic industry believes, however, that it could retain a significant percentage of its customer base by relying upon shorter delivery times, proximity, ease of post-sale service and other non-price variables. Those customers whose purchasing decisions are based solely or primarily upon price could and would continue to buy the less expensive imported merchandise.

WMA submits that the effect of a tariff increase upon consumers will be as minimal as that felt by the foreign manufacturers. In the waterbed industry, retail prices are generally twice those charged at the wholesale level. Thus, prior to the availability of cheaper Taiwanese mattresses, a domestic mattress that wholesaled for $24.00 was usually sold at retail for approximately $48.00. With the influx of Taiwanese mattresses at $12.00 per unit, many domestic manufacturers have lowered their prices to barely profitable levels in the $20.00 range. Retailers apply their customary mark-up, selling the domestic product to consumers for $40.00.

Most important, however, is the fact that we have reason to believe that a majority of the imported mattresses may also be selling at retail for up to $40,00. In other words, it is WMA's belief that many retailers have *not* passed on to the consumer the savings they have experienced due to purchases of less expensive imported products. If that is the case, it is the domestic wholesale price, not the import wholesale price, which will determine the retail price for domestic *and* imported waterbed mattresses.

Thus, if a 40 percent duty raises the wholesale price of an imported mattress to $16.50, or even to $19.00 or $20.00, the higher domestic wholesale price should still act as a cap upon retail prices. WMA sincerely believes that a 40 percent duty on imported mattresses and liners will have little or no effect upon the prices consumers pay for those products at retail.

Effect of No Duty Increase

If a 40 percent duty is imposed, neither foreign manufacturers nor American consumers will suffer to any appreciable degree. If, on the other hand, the duty remains at its current 2.4 percent level, the domestic companies who founded this industry will be forced either to abandon the waterbed business altogether or to move offshore themselves. Several members of WMA are now purchasing mattresses and liners from Taiwan and at least three WMA members have opened manufacturing facilities in Mexico. The trend is clear: absent and equitable duty rate which will facilitate fair competition, the American pioneers of the waterbed business will become a part of history. As a consequence, the uskilled and semi-skilled workers they employ will find themselves without work.

Conclusion

The American businessmen whose companies are endangered by low cost imports of waterbed mattresses and liners testified before the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative, in September 1983. They stated at that time that, out of a need to survive, they will move offshore if an equitable duty is not imposed upon waterbed mattresses and liners. These statements are not meant as "threats", but rather as statements of economic reality. Indeed, in the eight months since the GSP hearing, several additional domestic manufacturers have been forced to set up offshore production facilities.

WMA truly believes that H.R. 5469, as its preamble states, provides for "equitable" tariff treatment of waterbed mattresses and liners. Assessment of the bill's 40 percent rate of duty (1) would still give the foreign manufacturers a price advantage, (2) would not seriously affect the prices consumers pay at retail, and (3) would permit the founders of this industry to continue to manufacture waterbed mattresses and liners in the United States. In a comparative sense, the bill is more than equitable, for waterbeds exported to Mexico and Taiwan are assessed duties of 65 and 60 percent, respectively.

The members of the Waterbed Manufacturers Association who support H.R. 5469 feel that their industry and its problems are unique. WMA's position is different from those in other industries who seek domestic content legislation; our members are *not* making huge profits and our employees are not being paid $20 per hour. The waterbed industry does not lag behind the foreign competition due to a failure to modernize production facilities or to develop new technology; our members are the leaders worldwide in those areas. WMA does not seek to eliminate foreign competition altogether; our members took substantial risks in the late 1960's, endured the unprofitable years of the industry's infancy and now, when the industry has gained acceptance and legitimacy, see the market being lost to imports.

The supporters of H.R. 5469 have come to the Congress, and have not chosen alternative avenues of potential relief, for several reasons. First, they believe that in Congress their views will receive impartial consideration. Secondly, it is only from Congress that permanent relief of the type necessary to save this industry can be obtained. Finally, the companies who are literally fighting to survive in a most competitive marketplace do not have the financial resources necessary to pursue to a successful conclusion their rights under the trade laws.

In the final analysis, the jobs of American workers are at stake. Admittedly, the domestic waterbed mattress and liner industry is not a "large" employer when compared to other industries. The waterbed industry is, however, a growth industry and, without H.R. 5469, the opportunity for growth and the employment of additional Americans will be denied.

The Waterbed Manufacturers Association and each of the companies listed herein respectfully urge the Committee to give favorable consideration to the passage of H.R. 5469.

EXHIBIT A

MANUFACTURING COST COMPARISON—KING SIZE WATERMATTRESS

	United States	Taiwan
Material:		
(.67/lb.) Vinyl Blue—93″ × 20 mil. (.49/lb.)	$9.58	$7.00
Valve and label	.40	.20
Box	.24	.20
Polybag	.08	.08
Patch kit and warranty card	.23	.09
Subtotal	10.53	7.57
Labor:		
(8.00/hr.) Set-Up (1.00/hr.)	.10	.03
Manufacturing	2.90	.72
Subtotal	3.00	.75
Production cost per unit	13.53	8.32
Manufacturing burden	3.87	.75
Subtotal	17.40	9.07
Freight to United States		[1] .67
Total	17.40	9.74

[1] Freight is calculated as follows: the shipping cost per container is $1,400. A container can hold 1,200 cubic feet of cargo. Since a packed mattress takes up .55 cubic feet, a container holds a minimum of 2,100 mattresses $1,400 divided by 2,100 equals $.67 per mattress.

CERTAIN TARIFF AND TRADE BILLS

THURSDAY, JUNE 21, 1984

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met at 9 a.m., pursuant to notice, in room B-318, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

[Press release No. 41, Tuesday, June 12, 1984]

Hon. Sam M. Gibbons (D., Fla.), Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Announces Hearings on Certain Tariff and Trade Bills, June 21, 1984

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold public hearings on Thursday, June 21, 1984, on certain tariff and trade bills that provide for permanent duty-free entry, duty reduction, temporary suspension of duty, duty increase, classification changes, and other bills (written comments previously requested in Subcommittee press releases #29, #35, and #37). The hearings will be held in room B-318 Rayburn House Office Building, beginning at 9:00 a.m.

Officials from interested Executive branch agencies will be the first witnesses. Testimony will be received from interested private sector witnesses.

The tariff and trade bills on which testimony will be received are listed below:

H.R. 3159 (Mr. Gibbons): To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

H.R. 4178 (Mr. McKinney): To amend the Tariff Act of 1930 to increase from $250 to $1,500 the value of goods eligible for informal entry, and for other purposes.

H.R. 5182 (Mr. Bonker): To amend the Tariff Schedules of the United States to clarify the duty treatment of certain types of plywood.

H.R. 5228 (Messrs. Gibbons, Conable, Vander Jagt, and Frenzel): To authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements.

H.R. 5418 (Mr. Frenzel and Ms. Mikulski): To amend section 641 of the Tariff Act of 1930, and for other purposes.

H.R. 5455 (Mr. Glickman): To amend the Tariff Schedules of the United States to clarify the classification of unfinished gasoline.

H.R. 5625 (Mr. Wyden, et al.): Requiring the Commissioner of Customs to establish a customs district known as the Columbia-Snake Customs District.

H.R. 5751 (Mr. Gejdenson): To extend for 2 additional years the suspension of duty on uncompounded allyl resins.

H.R. 5783 (Ms. Kaptur): To suspend for a 3-year period the duty on certain metal umbrella frames.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Requests to be heard must be made by telephone to Harriett Lawler [telephone (202) 225-3627] by noon Tuesday, June 19, 1984. The request should be followed by a formal written request addressed to John J. Salmon, Chief, Counsel, Committee on

Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance will be encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesman to represent them in order for the Subcommittee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing. This process will afford more time for Members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 100 copies of their prepared statements to the full Committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person because of the large number of bills involved.

Each written statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address, and capacity of the person submitting the statement (as well as a telephone number where he or his designated representative may be reached);
2. A list of any clients or persons, or any organization on whose behalf the statement is submitted; and
3. A topical outline or summary of the comments and recommendations in the statement.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

Persons submitting a written statement in lieu of a personal appearance should submit at least *six (6) copies* of their statement, by close of business, Thursday, June 21, 1984, to John J. Salmon, Chief Counsel, Committee Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Committee office before the hearing begins.

Chairman GIBBONS. We have got lots of ground to cover with our own material, and we have even more ground to cover because of the tax conference going on at the same time, and I will try to keep this thing running steadily.

This morning's hearing will address the tariff and trade bills. Although a number of other tariff and trade bills are under active consideration by this subcommittee, the press of time does not permit us to hold hearings on every bill.

However, because we have received detailed written statements from interested parties, and the administration on most of these bills, we feel that we have sufficient information upon which to make an informed and reasoned judgment, but there are some bills that are not on today's hearing list.

It is my intention to schedule a markup session on the tariff and trade bills next week. Because of the large number of witnesses we have this morning, I would urge each witness to briefly summarize their testimony, essentially what you have to tell us is what is the need and how your bill fills that need or solves that need.

Our first witness this morning is Ambassador Robert E. Lighthizer, who is Deputy U.S. Trade Representative. He is here to testify on H.R. 5228.

We will be hearing this morning Ambassador Lighthizer first because he has another engagement this morning. We will hear from Congressman Bonker, who was to chair a hearing at 10 a.m., followed by Congressman Gejdenson and the administration panel and the remainder of the witnesses scheduled.

Good morning. Just take off and start.

STATEMENT OF AMBASSADOR ROBERT E. LIGHTHIZER, DEPUTY U.S. TRADE REPRESENTATIVE

Mr. LIGHTHIZER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to present the administration's position on the Reciprocal Tariff Reduction Acceleration Act of 1984.

This bill is necessary to implement the U.S. contribution to the trade liberalization steps agreed to last year at the Williamsburg summit. At that time, we, along with the EC, Japan and Canada, agreed to mutually accelerate the implementation of the staged reductions negotiated during the Tokyo round of multilateral trade negotiations. Each of the four countries is taking the domestic steps necessary to give effect to this agreement as quickly as possible. Our trading partners are watching with interest this congressional process with a view toward simultaneous acceleration of their Tokyo round tariff cuts later this year.

If enacted, this bill would enable the President to accelerate, on an annual basis and for not more than a year at a time, the staged rate modifications set out in the Tariff Schedules of the United States. However, such accelerated tariff cuts could be proclaimed only upon a Presidential determination that the EC, Japan, and Canada will simultaneously implement similar acceleration of tariff concessions.

The bill would work in the following manner: On the date of passage in 1984, the President would be able to proclaim the immediate application of the rates scheduled to be effective January 1, 1985, only if he determines that our principal trading partners will simultaneously take similar action. On January 1, 1985, the President would be empowered to proclaim the rates effective January 1, 1986, conditioned upon his determination that the others will do the same. This procedure would continue each year until the completion of all scheduled tariff reductions both here and abroad.

The staged tariff reductions agreed to during the Tokyo round represent a significant step toward a more open trading system. The negotiations achieved an average tariff cut on industrial products of nearly 40 percent for the EC, 42 percent for Canada, and 62 percent for Japan.U.S. tariffs, on the other hand, were reduced by an average of only 31 percent.

The Trade Act of 1974 required that the U.S. duty reductions be phased in over a period of 8 years to enable domestic interests to absorb them without any abrupt business or worker displacement. The annual tariff cuts range between 0.1 to 2 percentage points. One year acceleration of U.S. staged rates would merely reduce the

8-year phasing period to 7 years, thereby doubling the tariff cut for only 1 year.

We need to be careful not to overstate the economic consequences of the legislation. With average worldwide tariffs of developed countries on industrial products at 4.2 percent, tariffs remain economically significant in only a few sectors. In light of the dollar's strength since 1980, early implementation of the Tokyo round tariff package will benefit U.S. exports only at the margin and will not dramatically affect the overall position of our domestic industries. It would, however, be an important symbolic gesture in support of the open trading system.

In closing, I would also like to stress that this bill requires the President to make a determination that our major trading partners are taking the same steps toward acceleration of their Tokyo round tariff commitments as we are. Japan, the EC, and Canada have publicly affirmed their intent to accelerate annual staged reductions in step with the United States. Japan implemented its 1985 scheduled rates in April of this year, while the Canadians and Europeans are prepared to accelerate their tariff cuts simultaneously with us. We will carefully review the progress of these countries toward implementing accelerated staging before we advance any reduction in U.S. tariffs. We strongly believe that acceleration must be taken by each partner among the principal trading nations in an identical fashion. The United States will not make concessions alone.

Mr. Chairman, the proposed bill reflects the commitment of the United States, the EC, Japan and Canada to an open multilateral trade system. It translates this commitment into specific actions aimed at dismantling trade barriers and promoting economic growth. We urge its early passage. Now I would be happy to respond to any questions the subcommittee members may have.

Chairman Gibbons. Thank you. Sounds like a reasonable idea, particularly since we have such an advantage over others in all of this. But Mr. Ambassador, one of the main arguments used by the textile industry in opposing tariff acceleration is that it would remove one of the forms of leverage for renewal of the fiber arrangements which expires in 1986.

They point out that the snap-back provision which automatically restores present MTN duties on textiles, if textile import restrictions are not in place, will no longer apply once MTN cuts are phased in by January 1, 1986.

Do you have a response to this argument?

Mr. Lighthizer. We are aware of that criticism, Mr. Chairman. It is our hope that the President will take that into consideration when he makes his determination as to whether or not to accelerate the next step in the staging.

Also, I would add that our staff is looking at other possible statutory changes that would help to reestablish that leverage which we understand is important to the textile industry.

Chairman Gibbons. Thank you very much. I support the move, and hope we can get it done.

Mr. Lighthizer. Thank you, Mr. Chairman.

Chairman Gibbons. Is Congressman Bonker here? Here he is. Don, you are the next witness. We will take up Congressman Bonker's bill, H.R. 5182, to amend the Tariff Schedules of the United States to clarify the duty treatment of certain types of plywood, and you may proceed as you wish.

STATEMENT OF HON. DON BONKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. BONKER. Thank you, Mr. Chairman, so much for this opportunity to have a few moments this morning. I am going to be very brief, and offer my statement for the record.

Chairman GIBBONS. Certainly, it will be included in the record.

Mr. BONKER. And remind the chairman that when he is in Seattle next month, we will show him a piece of plywood so he can see the distinction that I want to point to today.

Chairman GIBBONS. I am looking forward to it.

Mr. BONKER. Mr. Chairman, the legislation I have offered is intended to deal with some definitional problems in the law about categories involving imported wood products. The bill would do this, in effect, by changing slightly the definitions for plywood and building boards. Presently, because of a definitional problem those categories overlap, and allows the Canadians to export what in effect is plywood to the United States under a definition of building board. They do this simply by putting an edge on the plywood, the result of which is that they benefit by about a 10-percent reduction on tariff.

I don't think anybody is doing anything wrong in this process, I think the Customs Service probably is making a proper interpretation of the tariff law and the Canadians are doing what any exporters would do under the circumstances to try to find a way of getting the product in as cheaply as possible. In any case, I think that plywood is plywood is plywood, and if it is coming in as plywood, it ought to be treated accordingly, and the tariff imposed accordingly.

The definition for building board states that its panels of rigid construction, including tiles and insulation board are chiefly used in the construction of walls, ceilings or other parts of buildings. This is a rare definitional term, because normally, when we talk about tariff definitions, we are talking about composition. In this particular case, the definition relates to application rather than composition.

But in any case, what my bill would do is first create a single category for plywood and second, with respect to building board, make some changes so that we can carry out its original intent—that is, to use it as a residual category for wood sheets that do meet the definitions of plywood wood veneer or cellular panels.

Mr. Chairman, members of the industry will be represented this morning, and they have some of the technical information if the committee desires to go into in further detail, but I will conclude my remarks at this point.

[The prepared statement follows:]

STATEMENT OF HON. DON BONKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

I appreciate this opportunity to present my views on H.R. 5182, a bill which I introduced to revise the U.S. Tariff Schedules with respect to plywood products. I want to thank this Subcommittee for scheduling this hearing and giving active consideration to this proposal.

Mr. Chairman, this bill would correct what I believe is an irregularity in the tariff categories for plywood—one which is having damaging and unfair consequences for the manufacturers of some plywood products in the region which I represent.

Stated quite simply, the U.S. Tariff Schedule for plywood includes a separate category for sheets that are "chiefly used in the construction of walls, ceilings, or other parts of buildings." That description of usage fits virtually all plywood sheets, and therefore this category (245.80) duplicates and overlaps with the plywood category (240.21). The current effective duty on the latter is about 20 percent, but it is only about 10 percent on the former. Result: certain plywood sheets are entering the country as "building boards" under 245.80, while other sheets of plywood with the same or similar principal uses are coming in under 240.21. I believe these categories should be consolidated into one because the distinction between them is false, and allows plywood to enter the United States at a level of duty below what has been intended and negotiated for plywood.

That, Mr. Chairman, is the effect of H.R. 5182. It creates a single tariff category for plywood sheets, regardless of their principal use, and makes the "building board" category what I believe it was originally intended to be—a residual category for wood sheets that do not meet the definitions of plywood, wood-veneer, or cellular panels.

I am aware that several criticisms have been made of this proposal, and I would like to address them. First, the criticism has been made that this bill would have the effect of preempting an existing case in the U.S. Court of International Trade. Such a case is admittedly pending before that court. The question before the court, however, is whether the Customs Service is correctly interpreting the Tariff Schedule. The problem, I believe, is not so much with Customs' interpretation as with the Tariff Schedule itself. The Tariff Schedule is set by legislation, and the Congress has every right to revise and improve by amendment at any time regardless of any pending judicial cases. Indeed, I would contend we have an obligation to do so, particularly when judicial cases take so long to resolve. In the highly competitive building materials business, particularly smaller producers can be put out of business in the time it takes to correct inequities in the trading system. As this Subcommittee has proposed in its own Trade Remedies bill, we need to streamline international trade remedy procedures to better enable our companies to compete effectively. In international trade, too, justice delayed is often justice denied. In this case, I believe legislative remedies will be more expeditious than deferring to the courts.

The criticism has been made, Mr. Chairman that this bill would violate U.S. obligations under GATT by, in effect, altering a tariff to which we are bound under our trade agreements, and by departing from acceptable procedures under the GATT. I do not agree with that charge. Each nation has a right under the GATT to formulate its own tariff schedule, and to make clarifying revisions in it. The effect of this revision would simply be to apply to all plywood sheets the duty we intended should apply to plywood. It would increase the duty on some products only to the extent that they have been miscategorized as building sheets when they are in fact plywood sheets. In short, we have a perfect right to correct our own errors of product classification under the GATT, and that is all I am proposing to do. The intent of this legislation is not to raise or lower the tariff either on plywood or on building boards, but only to do a more accurate job of distinguishing between the two.

Finally, Mr. Chairman, the criticism has been made that there are insufficient economic reasons to make this tariff schedule improvement—that it has not resulted in significant economic injury. I'm not sure that economic injury is a relevant standard in attempting to clarify the Tariff Schedule. However, in fact, particularly small plywood producers in the area I represent have been injured. They cannot compete with the plywood sheets that enter the country under the reduced tariff for building boards. I will leave it to the industry representatives testifying today to estimate more precisely the exact volume of this trade. Admittedly, it is a small proportion of total trade in plywood. I see no reason, however, why we should have to wait for massive levels of trade and economic injury when the problem is our own misformulated tariff categories.

Once again, Mr. Chairman, I appreciate this opportunity to present my views on this matter of urgent economic importance to the plywood industry in the pacific Northwest, and I urge the Subcommittee to take favorable action on this legislation.

Chairman GIBBONS. I know in my briefing book that the Department of Commerce opposes the provision of your bill, and the summary of their opposition is this: Perhaps you don't have the information, but maybe the industry can supply it. The Commerce says the industry initiated a case regarding the classification of plywood as building boards with the U.S. Court of International Trade in August of 1983, and a decision should be made by the court sometime this fall or shortly thereafter.

The industry has yet to exhaust the applicable administrative remedies and should continue to pursue those remedies rather than enacting legislation.

I don't know if you are familiar with that argument of theirs or have a response to it?

Mr. **Bonker**. Is that Customs or Commerce?

Chairman **Gibbons**. Department of Commerce.

Mr. **Bonker**. I am aware of one suit that is pending. The suit is in the Customs Court, and it is brought, I believe, by the plywood industry against the Government. But again, I am not sure that the Government is making a poor judgment based on the present definition.

I think that is the responsibility resides more with Congress. We are really not changing the tariff, what we are trying to do is make sure that definition for plywood is clear and unequivocal and then the definition for building boards is clear and unequivocal, so we don't have the overlapping problem.

Chairman **Gibbons**. I look forward to being out in your area with you and to look over the problems of the industry and looking at those particular sheets of plywood that we are talking about. Perhaps we can get this legislation moving.

Mr. **Bonker**. Thank you again, Mr. Chairman, for allowing me to appear.

Chairman **Gibbons**. Happy to have you.

Mr. Gejdenson, come forward, you are the next witness here.

STATEMENT OF HON. SAM GEJDENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. **Gejdenson**. I am going to be very brief, Mr. Chairman, I am sure you have got a full day ahead of you.

Chairman **Gibbons**. We have several days ahead in one.

Mr. **Gejdenson**. What we have here is a problem you helped us address last time around, in 1982, with H.R. 4566. This time, we introduced legislation 5751.

The primary problem is that uncompounded allyl resin, which is used in the manufacture of a product in my district has to be imported from Japan, since it is the only place in the world that it is made. When this tariff was originally put in place there was an American producer, but the American producer went out of business some years ago. American users of the product have tried to get another American manufacturer to go into the business, but they have not been successful in this effort.

This tariff simply makes our product less competitive when we export it, and places our firms at a real disadvantage. If we have to pay a 9-percent tariff on the resin, and a Japanese company is making the same kind of circuit board with that material, for example, they get a 9-percent advantage. In today's competitive foreign market, that 9 percent can make the difference.

I thank you for giving me this time and giving this this legislation consideration. I will be happy to answer any questions.

[The prepared statement follows:]

STATEMENT OF HON. SAM GEJDENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Thank you, Mr. Chairman, for providing me with the opportunity to testify today.

As you know, I have introduced legislation, H.R. 5751, which would extend for two additional years the suspension of duty on uncompounded allyl resins. Back in 1982, Mr. Chairman, you included a two year suspension of this duty in H.R. 4566, which later became Public Law 97-446. The circumstances which led to the original suspension remain unchanged, which is why I am requesting an extension here today.

To give some background, the Rogers Corporation, or Rogers, Connecticut, has been making diallyl phthalate (DAP) engineering plastics for a variety of electronic and electrical applications for over twenty years. A major ingredient in the molding material formula is DAP prepolymer, an uncompounded allyl resin, which until 1979 was manufactured by both the FMC Corporation here in the United States and the Osaka Soda Company of Japan. In early 1980 FMC elected to discontinue production of the DAP prepolymer, leaving Osaka Soda the only producer in the world. The Rogers Corporation, and the three or four other companies affected by the situation have attempted to encourage likely domestic sources to produce this prepolymer, but these attempts have not been successful.

Prior to the suspension of duty, the Rogers Corporation was paying a 9% duty on the import of this allyl resin, costing them approximately $115,000 per year. Due to an estimated 15% increase in their usage of this substance, a reimposition of the duty would cost the Corporation about $125,000 per year.

I believe that an extension of this suspension is imperative for a variety of reasons. First of all, since there is no domestic producer of uncompounded allyl resins, there is no need to safeguard an American company through imposition of a duty. Secondly, the duty is being passed on to the customers of Rogers and the other companies that use this material, most of whom supply electronics parts and assemblies to Department of Defense prime contractors. These contractors build the higher cost into the military equipment they are manufacturing, and ultimately it is the taxpayer who pays the bulk of the duty. Finally, a significant amount of the materials produced, at least by Rogers, are exported. The duty adds to their costs, and makes it more difficult for them to compete abroad, at a time when competing in foreign markets is already problematic.

For these reasons, Mr. Chairman, I urge the Subcommittee to favorably report this bill.

Thank you.

Chairman GIBBONS. Well, thank you. We have not yet received any response from the administration, but I am sure we will have one, and perhaps at that time, we will have some more questions for you.

But as I recall, we passed this one before, haven't we?

Mr. GEJDENSON. Yes, we passed it 2 years ago, we are very appreciative of your help then.

Chairman GIBBONS. I will tell you, one of the big problems we have got, we have got roadblocks over in the Senate. I hope we can pass this in the House this year, and I want to pass it through the House and Senate. We are having real problems with some of those Senators over there.

I will talk with you a little more privately about that.

Mr. GEJDENSON. All right.

Chairman GIBBONS. Thank you very much.

We have a panel—why don't we ask the Commerce panel, U.S. Trade Representative panel, and Trade Commission all to come forward to the table here and they can address all nine of the bills.

We will ask you to go through them one at a time, then we will come back and hit the proponents and opponents of the bill.

We are going down, this sheet that you have in front of you. All of you can speak or one of you can speak. I hope somebody will speak, as we go through these, and when you do speak identify yourself so that the clerk will record the appropriate name and your agency.

Let's take up H.R. 4178, by Mr. McKinney. Let's see, what is the agency position on Mr. McKinney's bill?

STATEMENT OF LOUIS J. MURPHY, ACTING DIRECTOR, OFFICE OF INDUSTRY ASSESSMENT AND TRADE DEVELOPMENT, INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, ACCOMPANIED BY BARBARA A. STEINBOCK, INTERNATIONAL ECONOMIST, AND TOM GILLETT

Mr. **Murphy**. Good morning, Mr. Chairman, I am Louis J. Murphy from the Department of Commerce.

On H.R. 4178, the administration agrees that the value of goods eligible for informal entry needs to be raised.

We would have no objection to enactment of H.R. 4178 if it were amended as I will outline. In addition, we suggest that section 2 be revised to provide an effective date 15 days after date of enactment. This short delay would give the U.S. Customs Service time to notify its field offices and the public of the details of the new law.

In anticipation of proposals to raise the informal entry level, the Department of Commerce consulted with members of the Industry Advisory Committees on the advisability of raising the informal entry level, the appropriate level to which it should be raised, and problems that might be encountered should the level be raised.

We mailed to these industry advisers an explanation of a bill being considered by the U.S. Customs Service and requested their comments.

The results of that survey show that the greatest concern centered on avoidance of import-quota programs and potential loss of statistical data for import-sensitive products.

There was some negative reaction to raising the informal entry level above $1,000.

Our industry advisers supported an increase to $1,000 if the textile, apparel and leather goods industries and products subject to import relief were exempt from the increase.

The support from the textile, apparel and leather goods industries was further predicated on the assumption that statistics would continue to be collected and published in convenient form on those products exempt from the increase.

We think that the comments of the Industry Advisory Committee members should be taken into account in revising H.R. 4178.

We also think that language in H.R. 4178 should carefully describe the products exempt from any informal entry increase in order to make it easier for Customs to enforce. We recommend that H.R. 4178 be revised to include the language currently in section 205 of H.R. 3398, as reported by the Senate Finance Committee, which describes the exemptions that would be applicable.

We within the Department of Commerce think that we have resolved the problem of providing adequate data on imports of products subject to exemptions from the increase. To accommodate user needs for data on sensitive import shipments, the Bureau of the Census proposes to create a special monthly report, in microfiche and in the same format as currently shown in the IM 145–X, providing aggregate totals for excepted commodities.

These aggregate totals would be drawn from the regular statistical reports and from separate compilations of items valued below $1,000.

Data on imports of excepted items would be provided in this report for all shipments valued over $250. It would be presented by 7-digit TSUSA number, by country of origin, and by Customs district of entry, making it convenient for users to monitor the volume of imports.

Users of these statistics would have available to them in one report information on total import levels for excepted commodities. We think that this monthly report will meet the needs of industry.

In the case of textiles and apparel, the Bureau plans to continue to include data on excepted imports in the textile register tape and textile quota reports which currently are available through the Office of Textiles and Apparel and in the textile net tape which the Office of Textiles and Apparel uses to produce the performance reports on bilateral agreements.

Chairman GIBBONS. Any other comments?

Mr. MURPHY. Mr. Robert Schaffer, Assistant Commissioner for Commercial Operations of the U.S. Customs Service does have a few comments.

Mr. SCHAFFER. I have a prepared statement which I will offer for the record.

Chairman GIBBONS. We will put that in the record.

STATEMENT OF ROBERT P. SCHAFFER, ASSISTANT COMMISSIONER, COMMERCIAL OPERATIONS, U.S. CUSTOMS SERVICE, ACCOMPANIED BY RICHARD H. ABBEY, CHIEF COUNSEL

Mr. SCHAFFER. I would like to briefly summarize.

If this bill is enacted, it is Customs' plan initially to adopt by regulation an informal entry limit of $1,000. This represents almost exactly the effect that inflation has had on the value of the current $250 limit since it was set by Congress in 1953.

Approximately 22 percent of the number of formal entries processed by the Customs Service in the last fiscal year, 1.2 million out of 5.3 million total, were for merchandise valued at more than $250 but less than the $1,000 limit we would like to adopt.

However, these same entries represented only 0.5 percent, $1.1 billion out of $233 billion total, of the value of the merchandise imported subject to formal entries during that same period.

As a result, a substantial portion of the time that Customs, and importers, spend on preparation and review of formal entries is spent on a disproportionately minuscule fraction of the total value of imported merchandise.

Raising the informal entry limit to $1,000 would save Customs approximately $10.5 million, based on figures which show that in the last fiscal year, it cost Customs $1.71 to process an informal entry compared to $10.74 for a formal entry.

Although we are not able to estimate the dollar savings to private industry which this change would produce, we do estimate that time savings would be between 200,000 and 300,000 hours per year.

I must point out that these benefits would be substantially diminished by the language of H.R. 4178. The exemptions from the increased limit are so extensive that the change is almost meaningless.

We do not believe that these exemptions are needed in order for Customs to administer quantitative restrictions, quotas, or antidumping and countervailing duty laws.

We recommend strongly that the language added by the Senate in section 205 of H.R. 3398, as reported out by the Senate Finance Committee, be substituted for the language of H.R. 4178.

Essentially, the Senate version applies the $1,000 limit for informal entry on all merchandise except textile goods, which we recognize to be a special case, certain leather goods, furniture, certain rubber and plastics products, and other articles subject to import relief.

Chairman **Gibbons**. In other words, you are saying if the Senate would send us back that bill, we could get this done?

Mr. **Schaffer**. Essentially, that is correct.

Chairman **Gibbons**. I hope you will tell some of the Senators that.

Mr. **Schaffer**. That would conclude the remarks.

[The prepared statement of Mr. Schaffer concerning H.R. 4178 follows:]

Statement of Robert P. Schaffer, Assistant Commissioner (Commercial Operations) U.S. Customs Service

Mr. Chairman, I am Robert Schaffer, Assistant Commissioner of Customs for Commercial Operations. With me today is Mr. Richard Abbey, Chief Counsel of the Customs Service. We are pleased to be here to offer the views of the U.S. Customs Service on H.R. 4178, a bill which would amend section 498 of the Tariff Act of 1930 (19 U.S.C. 1498) to increase the limit on value of goods eligible for informal entry from $250 to $1,500.

Under section 498, when the aggregate value of a shipment meeting the requirements of regulations issued by the Secretary does not exceed the amount specified in this section, the informal entry procedure may be used. The informal entry procedure requires no bond and no formal appraisement of the goods, and permits the entry document to be filled out by the Customs inspector, who then examines, appraises, classifies, and releases the merchandise to the importer upon payment of duty and taxes. This proposal would not only decrease the backlog of unappraised, unliquidated entries, but it would also benefit small importers in time and money savings.

Currently, goods entered into the United States valued at over $250 are subject to formal entry procedures. An importer, or authorized agent such as a customs broker, presents an entry or immediate release document, invoice(s), evidence of right to make entry, and, as appropriate, other documentation to enable Customs to examine the goods, ensure their admissibility, and to release the goods. A surety bond, in the form prescribed by regulations, is required. Within ten working days following release of the goods, either the importer or his authorized agent is required to file entry summary documentation and estimated duties and taxes as appropriate. The entry summary documentation consists of the documents presented to obtain release of the goods, plus the entry summary, the Customs Form 7501. The information filed with this documentation must be adequate for Customs to classify and appraise the merchandise, and to verify the statistical information required by the Bureau of the Census. Exceptions to these general procedures exist for special classes of merchandise, such as goods subject to quota.

Goods valued at less than $250 may be entered under informal entry procedures. An importer or authorized agent presents an informal entry to Customs, along with appropriate invoices and documents, and the proper amount of duties and taxes. The informal entry is reviewed, the collection is made, and the informal entry is immediately liquidated. No surety bond is required. The merchandise must, of course, meet all admissibility criteria. It should also be noted that the amount of information and paperwork required for an informal entry is significantly less than for a formal entry. In addition, statistical verification and reporting are not required.

If this bill is enacted, it is Customs' plan initially to adopt by regulation an informal entry limit of $1,000. This represents almost exactly the effect that inflation has had on the value of the current $250 limit since it was set by Congress in 1953. Approximately 22 percent of the number of formal entries processed by the Customs Service in the last fiscal year (1.2 million out of 5.3 million total) were for merchandise valued at more than $250 but less than the $1,000 limit we would like to adopt. However, these same entries represented only 0.5 percent ($1.1 billion out of $233 billion total) of the *value* of the merchandise imported subject to formal entries during that same period. As a result, a substantial portion of the time that Customs—and importers—spend on preparation and review of formal entries is spent on a disproportionately minuscule fraction of the total value of imported merchandise. Raising the informal entry limit to $1,000 would save Customs approximately $10.5 million (based on figures which show that in the last fiscal year it cost Customs $1.71 to process an informal entry compared to $10.74 for a formal entry). Although we are not able to estimate the dollar savings to private industry which this change would produce, we do estimate that time savings would be between 200-300 thousand hours per year.

I must point out that these benefits would be substantially diminished by the language of H.R. 4178. The exemptions from the increased limit are so extensive that the change is almost meaningless. We do not believe that these exemptions are needed in order for Customs to administer quantitative restrictions (quotas) or antidumping and countervailing duty laws. We recommend strongly that the language added by the Senate in section 205 of H.R. 3398, as reported out by the Senate Finance Committee, be substituted for the language of H.R. 4178. Essentially, the Senate version applies the $1,000 limit for informal entry on all merchandise except textile goods, which we recognize to be a special case, certain leather goods, furniture, certain rubber and plastics products, and other articles subject to import relief.

We believe that the justification for increasing the informal entry limit is strong. The $250 ceiling on informal entries currently in the law was set in 1953. It represents what a Congress sitting three decades ago, at a time when the volume of international trade was a small fraction of what it is today, thought was an appropriate level to exempt from formal entry requirements. It is wholly inappropriate today, in view of the expansion of international trade, the effects of inflation, and foreseeable limitations on Customs' resources. Furthermore, in the near future, Customs will implement its automated commercial system which will permit 100 percent processing and statistical reporting of informal entries as well as formal entries. This system will substantially improve the coverage and timeliness of our statistical reporting, and represents one more reason to increase the informal entry limit now.

Mr. Chairman, that concludes my statement. Mr. Abbey and I shall be pleased to answer any questions you may have.

Chairman GIBBONS. Thank you very much. Are there questions of the panel on this bill?

If not, staff tell me it would be probably easier maybe for us if we would go down this blue sheet.

Mr. MURPHY. Could we take up the remainder of the non-Customs Service bills and in particular start with the H.R. 5455?

Chairman GIBBONS. That is gasoline bills?

Mr. MURPHY. Yes, sir; Mr. John Ray, Assistant U.S. Trade Representative, will be presenting the testimony on that bill.

STATEMENT OF JOHN RAY, ASSISTANT U.S. TRADE REPRESENTATIVE FOR EAST-WEST TRADE

Mr. RAY. The administration has no objection to the intent of H.R. 5455. In our letter to the committee of May 23, we have made some technical drafting suggestions which we believe would make this proposal easier for the Customs Service to administer.

It is our understanding that if enacted, this bill would correct an anomaly in the tariff schedules whereby intermediate petroleum used as motor fuel is dutiable at a rate significantly higher than the rate applicable to motor fuel.

This anomaly discourages domestic processing and encourages importation of the finished product. Prior to a recent classification decision by the U.S. Customs Service, the product covered by this bill was treated as a motor fuel dutiable at 1.25 cents per gallon at the equivalent of 1.8 percent.

Customs has recently reclassified this product as a chemical mixture dutiable at 11.1-percent ad valorem. This is the equivalent of a sixfold increase in the average ad valorem equivalent duty on the product.

H.R. 5455 would restore the prior tariff treatment.

This product, known as unfinished gasoline, is supplied mainly by the People's Republic of China. Imports over the last 3 years from China have averaged approximately $300 million a year.

This is China's largest single export item to the United States. The 11.1-percent tariff may well eliminate this trade completely. We believe that this tariff increase would have the effect of disrupting the current status of our bilateral trade relationship with the PRC and might adversely affect our export interests.

H.R. 5455 would restore the situation that existed prior to the Customs classification decision. It is our understanding that this bill has the support of the majority of the domestic industry, both the major producers and the independents.

While we understand that some opposition to enacting H.R. 5455 has been expressed, we are of the opinion that the consequences for U.S. motor fuel processors and the potential adverse consequences to U.S. exporters, of letting this reclassification stand will be more severe than the consequences of enactment of this bill.

Thank you, sir.

Chairman GIBBONS. Is there a bill over in the Senate connected to our tariff bill like this?

Mr. RAY. Not that I am aware of, no, sir.

Chairman GIBBONS. One of my members has asked me to propose this question or pose this question to the Department of Commerce. It says, this committee has been provided with a statement regarding the competition problem created for U.S. domestic independent refiners by the imports of subspecification gasoline produced by less efficient foreign facilities that could not compete if located in this country.

The administration is apparently assisting other industries which have made similar cases such as automobiles, steel, motorcycle and so forth—what is the administration doing or planning to do about the issues raised by those refining companies and the association that is supposed to testify today, this is the first question.

Second question, assuming the claims of efficiencies are accurate, doesn't this industry represent one of those that should be protected from the less efficient noncompetitive foreign refined product?

Mr. RAY. Mr. Chairman, the bill which we are looking at now is not a bill which is opening up U.S. industry to foreign trade. It is a bill which would restore the status quo which has governed U.S. trade in this particular product for a good number of years and under which a significant amount of trade with an important trading partner has developed.

We are not aware, and there is no allegation of unfair trading practices on the part of the major exporter, the People's Republic of China, in this area.

Our feeling is that the advantages to U.S. industry of maintaining a source of low-octane blending fuel and the advantages to U.S. trade in general of maintaining an open and healthy trading relationship with the People's Republic of China, are such as to recommend this bill favorably to our attention.

Chairman GIBBONS. What prompted Customs to change the definition and when did it change it?

Mr. RAY. I am not sure what prompted Customs to do that. It was a standard review of the classification.

Chairman GIBBONS. What does Customs have to say?

Mr. GILLETT. Tom Gillett, I am in the Department of Commerce. In order to apply the duty assigned to motor fuel, the product must conform to certain standards—ASTM standards. If standards are changed, for example by EPA, then what formerly qualified as a motor fuel, does not now qualify. The standards were in fact changed in February.

In addition to that, I think the gasoline that was coming in from China never really qualified due to low octane, but it was allowed to come in as motor fuel anyway.

Mr. RAY. My understanding is that this was not ever used as a motor fuel directly going into U.S. cars, but was used always as a blending element for the U.S. industry.

Chairman GIBBONS. All right, fine.

Mr. RUSSO. Mr. Chairman, I would suspect that you are supporting the USTR definition of just setting up a new category blending fuels and charging $1.25, would that be my understanding?

Mr. RAY. That is our proposal, which is substantially the same as the intent of H.R. 5455. That is where we said that we would suggest some changes to make it more easily administered.

Mr. RUSSO. Mr. Chairman, it seems to me that an unfinished product being dutiable at six times the amount of the finished rate seems to me outrageous. I suspect Customs must abide by certain definitions that are within the law, so I guess what we need to do is indicate we would like to continue the procedure as it is now and find the proper mechanism, either through the Glickman bill or according to the way the Department recommends.

It seems to me we ought to at least get the rate back to what it was. I certainly don't want to have an adverse impact on our relationship with the People's Republic of China. We have had little problems with textile, and we don't need to make it any worse on gasoline.

I think we should make whatever changes are necesary to deal with the situation.

[The following was subsequently received for the record:]

THE SECRETARY OF COMMERCE,
Washington, DC. June 26, 1984.

Hon. SAM GIBBONS,
Chairman, Subcommittee on Trade,
Committee on Ways and Means, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to have the opportunity to comment on H.R. 5455. Before a recent decision by the U.S. Customs Service, the product covered by this bill was treated as a motor fuel, dutiable at 1.25 cents per gallon (Ad Valorem Equivalent of 1.8 percent). Customs has now classified this product as a chemical mixture, dutiable at 11.1 percent A.V.E., a sixfold increase. H.R. 5455 would restore the prior tariff treatment.

I support H.R. 5455, with the alternative language proposed by United States Trade Representative Brock on May 23, 1984, to Chairman Rostenkowski. This bill is extremely important since it will affect U.S. trade relations with several countries, primarily China and Mexico.

Unfinished gasoline is supplied mainly by the People's Republic of China. Chinese exports of this product to the U.S. have averaged approximately $300 million per year over the last three years. This is China's largest single export item to the United States. The 11.1 percent tariff may eliminate this trade completely.

Over the past year the U.S. and China have successfully worked through a number of difficult and sensitive issues in our bilateral relationship. As a result, we are now on the threshold of a new and promising era in our trade relations. In my opinion, unless the prior tariff treatment is restored, the current status of our bilateral trade relationship with China will be disrupted, with a possible adverse effect on U.S. export interests.

Mexico also exports unfinished gasoline to the U.S. These exports represent an important source of foreign exchange. In light of Mexico's current economic and debt situation, any decline in these exports will have an immediate adverse effect on its trade balance and its economic recovery. The higher tariffs will also send a negative signal to a country which is trying to improve its economic situation, with U.S. encouragement and interest.

The importance of H.R. 5455, with the proposed changes, cannot be overstated. The adverse consequences to the United States of Customs' action may be severe, and I urge that H.R. 5455 be given prompt and favorable consideration by the Committee.

Sincerely,

MALCOM BALRIDGE,
Secretary of Commerce.

Chairman GIBBONS. What is the next one?

Mr. MURPHY. If we could, Mr. Chairman, we would like to address H.R. 5182, clarification of the duty treatment of certain types of plywood.

Chairman GIBBONS. That is Mr. Bonker's bill.

Mr. MURPHY. That is, as you mentioned a few minutes ago, on basis of a letter that we submitted to the committee prior to our testimony, the administration does oppose enactment of H.R. 5182.

In 1982, the American Plywood Association petitioned the U.S. Customs Service, requesting that these plywood panels be reclassified under TSUS 240.21, as plywood with a softwood face.

The plywood panels currently are being classified under TSUS 245.80 as building boards. The American Plywood Association was advised in December 1982 that the Customs Service would continue classifying these products under TSUS 245.80 as building boards.

The American Plywood Association contested this decision, but it was later reaffirmed by the Customs Service. The industry then initiated a case with the U.S. Court of International Trade in August 1983 regarding the classification.

A decision should be made by that court sometime this fall or soon thereafter. Basically, we feel that the industry has not exhausted the applicable remedies and should continue to pursue those remedies rather than legislation being enacted.

In addition, the rates of duty for all of these items were subject to concessions made by the United States under the General Agreement on Tariff and Trade, and are bound against increase.

That is, the United States has undertaken a formal international obligation not to change these rates except in accordance with specific procedures prescribed by the GATT. H.R. 5182 would not comply with such procedures.

If the United States takes such an action which results in an increase in tariffs on bound items, countries with substantial trade interests here, particularly Canada, may claim offsetting compensation from the United States for the trade effect of that action or subject the United States to possible retaliatory trade measures.

We believe it is inappropriate to jeopardize our trading interests in this instance prior to a determination from the Court of International Trade that the Customs Service was in error.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you.

Mr. RUSSO. What steps need to be taken before their administrative remedies are exhausted?

Mr. MURPHY. In this instance, Mr. Congressman, what we have to do is await the Court of International Trade decision.

Mr. RUSSO. How long will that take?

Mr. MURPHY. The decision is anticipated this fall.

Mr. RUSSO. What happens after that?

Mr. MURPHY. Obviously, if the court finds that the Customs Service is not in error, then the current status would maintain. In that case, we would be concerned with whether the industry is perhaps having difficulties from imports from Canada. Again, there are procedures which the Congress has provided in this case from the Trade Act of 1974, where an industry that alleges injurious import competition could petition for import relief.

It would involve a thorough investigation by the ITC and after that, there might once again be the appropriate remedy if the ITC recommended relief to the President and the President recommended import relief action, then we could——

Mr. RUSSO. You started this in August of 1983, by the time you finish all the remedies, you state it would be August of 1987.

Mr. MURPHY. I don't think it would be 1987, but yes, it could be additional time, there is no doubt about that.

Mr. RUSSO. That is one of the problems I have with trade remedies around here. If members introduce bills they get faster action from us than they do from you.

Chairman GIBBONS. Sometimes. The Chairman and about 100 Members of Congress have had bills over in the Senate for a year and a half, Mr. Russo, and the Senate has sat there and done absolutely nothing about it. So, I am not sure we can pull down a lot of glory upon our shoulders.

Let me ask you, the industry could have started either way or both ways, at the same time, couldn't they have? They could have introduced a bill here, they could have had a 201 case, or they could have had a case that they chose the remedy and started pursuing that and now, they are afraid their remedy is not going to apparently get them relief, so they are coming here for relief.

When you say this is bound, you mean that under the General Agreement on Tariffs and Trade, if we effect this kind of Canadian trade and offset it by increased duty or something that is not agreeable under GATT, such as the escape clause action, that we will have to pay by some other tariffs the Canadians will rise against, could rise against our product, not necessarily have to be plywood either, it could be any product.

Mr. MURPHY. That is right, Mr. Chairman, obviously it would not necessarily have to be in the wood product area.

Chairman GIBBONS. You don't get an ultimate win for the United States, you just get an offset, somebody else has to pay for this change.

Mr. MURPHY. Precisely.

Chairman GIBBONS. If we pass this bill?

Mr. MURPHY. Precisely, Mr. Chairman.

Chairman GIBBONS. Some other American has to pay for this bill?

Mr. MURPHY. Yes, sir; that is right.

Chairman GIBBONS. We don't know what American, do we?

Mr. MURPHY. We do not know. It would be dependent on the action they took in response to our action.

Chairman GIBBONS. But it may be an American in my district.

Mr. MURPHY. Definitely possible.

Chairman GIBBONS. Unknown to me.

All right, well, we had better look closely at this one.

All right, what is the next one you want to take up?

Mr. MURPHY. The next one that I would like to address is H.R. 5751, continued duty suspension.

Chairman GIBBONS. 5751. That is the one the last witness on, Mr. Gejdenson.

Mr. MURPHY. I would like to state that the administration has no objection to enactment of H.R. 5751.

Chairman GIBBONS. OK.

Mr. RUSSO. That was easy.

Chairman GIBBONS. This is an old friend. We have had this one before, haven't we?

Mr. MURPHY. Yes, sir, Mr. Chairman.

Chairman GIBBONS. All right. What is the next one?

Mr. MURPHY. The last one I would like to address is H.R. 5783, the 3-year duty suspension.

Chairman GIBBONS. 5783?

Mr. MURPHY. Yes.

Chairman GIBBONS. Umbrella frames. I seem to remember that one someplace, too.

Mr. MURPHY. In short, Mr. Chairman, the administration is opposed to enactment of H.R. 5783 as currently written. We would have no objection if the legislation were amended to allow the duty suspension for a period of 1 year.

The current MFN rate of 15 percent was reinstated on umbrella frames from Taiwan on March 30, 1984. The duty-free treatment under GSP was withdrawn at that time, because Taiwan had exceeded the competitive limit for this product as provided for in title V of the Trade Act of 1974.

Basically, the Trade Act requires the President to remove the GSP eligibility for a country's product whenever that country accounts for 50 percent or more of the value of the total U.S. imports of the product concerned or a certain dollar value in it.

In 1983, Taiwan accounted for nearly 94 percent of the value of total U.S. imports of umbrella frames and was removed, as I said, from duty-free treatment, effective March 30.

The administration has proposed an extension of the GSP program currently scheduled to expire in January 1985. Under this proposal, the President would have the authority to waive the competitive need limits on a product specific basis when such action would be advantageous to U.S. economic interests.

In deciding whether to utilize the waiver authority, the President would be required to give great weight to the extent to which the beneficiary country has assured the United States of reasonable and equitable access to its markets and, after considering advice from the International Trade Commission, on the probable economic effects on U.S. industry of granting the waiver.

We believe it is preferable to reduce the tariff on a product such as umbrella frames through this approach rather than through duty suspension legislation.

The waiver authority provided in the administration proposal provides leverage which we could use to obtain liberalization of Taiwan's import regime, thereby benefiting a broad spectrum of U.S. export interests.

A 3-year duty suspension on umbrella frames would reduce our ability to assure that Taiwan undertakes this discipline of the international trading system. It would reduce our leverage.

In consideration of the fact that Congress currently is considering the administration proposals for extension of the GSP program, we would certainly not object to a 1-year duty suspension.

Chairman GIBBONS. All right, so, mainly your opposition to this bill is strategic as far as——

Mr. MURPHY. Exactly, Mr. Chairman.

Chairman GIBBONS. Mr. Frenzel, do you have any questions about umbrella frames?

Mr. FRENZEL. No, Mr. Chairman.

Chairman GIBBONS. Does that complete all yours?

Mr. MURPHY. That completes our portion. I would like to turn the remainder of the testimony over to the U.S. Customs Service.

Chairman GIBBONS. Fine.

Mr. MURPHY. Thank you, Mr. Chairman.

Chairman GIBBONS. Go ahead. Customs, we haven't got many left on your list. Who wants to take up the next one?

Mr. SCHAFFER. We will take up 5418 next, Mr. Chairman.

Chairman GIBBONS. OK.

Mr. SCHAFFER. Mr. Chairman, I am pleased to be here today to offer the views of the U.S. Customs Service on H.R. 5418, the Customs Brokers Act of 1984.

The bill would amend section 641 of the Tariff Act of 1930 to strengthen and clarify the authority of the Customs Service to regulate customs brokers. It would also require brokers to exercise greater diligence in supervising the operations of their employees.

As this committee is well aware, the Customs Service has been working with the National Brokers Association for several years in an attempt to reach a mutually agreeable solution to the necessary updating of section 641 of the Tariff Act.

The proposed legislation which is before you represents, in large measure, that agreed-upon solution. Unfortunately, there are several areas where we simply have not reached full agreement. Before discussing these areas, however, I would like to highlight some of the more significant areas where we do agree.

Chairman GIBBONS. All right.

Mr. SCHAFFER. The first area where we would suggest alternative language to that advocated by the BG community involves subsection (d) of the proposed bill relating to disciplinary proceedings.

Initially, we believe that additional language is required in paragraph 1 to make it clear that disciplinary action is applicable not only to actions by the licensed broker, but also to actions by any person associated with the broker by reason of employment or because of a substantial financial interest in the broker's customs-related business.

This suggested additional follows the approach taken in current statutory regulation of securities brokers.

While we realize that the analogy between securities brokers and customs brokers is not perfect, there are many similarities.

As this committee is well aware, customs brokers and their employees handle large sums of money, have access to a wealth of confidential business information, and the nature of the activity presents a wide range of opportunity for fraudulent conduct by a person who is so inclined.

As the Customs Service moves forward into the age of computerization and greater selectivity in entry processing, we believe it more critical than ever that both we and the importing community be able to rely on the integrity and discretion of both the broker and its employees.

We would also amend the disciplinary section to add a provision which basically tracks the language of the current law to allow the Secretary to discipline a broker when such broker has knowingly deceived, misled, or threatened any importer, claimant, or client in the course of the brokers customs business.

We certainly agree with the effort reflected in the current proposed section on discipline to set forth in greater detail the types of situations where disciplinary action is appropriate.

Indeed, much of the language in H.R. 5418 reflects our suggestions. At the same time, however, we believe it necessary to include this more general formulation in order to cope with unforeseen problems.

More importantly, we are very concerned whenever a broker uses his position as a licensee of the Customs Service to deceive, mislead, or threaten a member of the public. The language which we would add has been the law for many years and we are unaware of any abuse of this general language by the Government, and see no reason to delete these provisions.

A second area of disagreement relates to the requirement in the proposed bill for the use of an administrative law judge instead of a customs officer for hearings. We believe that this would be an unnecessary expense and that it would be less desirable than the current system.

First, we are not aware of any difficulties with the current use of an appropriate customs officer as the hearing examiner.

Second, the hearing examiner only makes a recommendation which is subject to review both by the Department and the courts. If any deficiencies arise in the hearing procedure, the Secretary or the courts are in a position to rectify that problem.

In addition, we currently average less than one such hearing per year, and we don't envision any significant increase under the new legislation. If anything, the ability to assess an intermediate monetary penalty would argue for even fewer revocation hearings in the future.

Thus, it would be totally impractical for Customs to hire its own ALJ, which would then necessitate using someone from another agency who would be totally unfamiliar with customs laws and regulations.

In our view, such a situation would increase the risk of an arbitrary recommendation and runs counter to the efforts of the Congress to place decisionmaking for such issues with those who are familiar with the subject matter.

In addition to these concerns, we would also observe that two provisions have been included in the proposed legislation which do not directly relate to the question of broker regulations.

Section 10 of the legislation would allow for refunds prior to liquidation. We strongly oppose this section as it is currently drafted. As drafted, the provision would allow for refunds "whenever it is ascertained that excess duties have been deposited."

In our view, this is the purpose of liquidation. To add this separate process would only create a two-tiered system which would be difficult to control, add much extra work and would run only to the benefit of importers and not the Government which would still be required to await liquidation to collect increased duties.

At the same time, we recognize that in certain situations, large overpayments are made inadvertently and in some of these situations, for example, where liquidation is being withheld pursuant to instructions from the Commerce Department, it would be desirable to have some means to rectify the problem before liquidation.

Thus, we would be prepared to support this provision if it were limited to situations involving manifest clerical error and we would suggest the language found in H.R. 5535 as a substitute for the language in section 10.

Section 9 of the proposed legislation also causes some concern. We are unsure as to the type and nature of liens which brokers might possess under the statutes or common law of the various States, and whether the differences between the States, or the difficulty in determining the common law might not result in confusion or a lack of uniform treatment.

It might also be necessary to amend various other provisions of title 19, for example, section 1613 relating to the disposition of the proceeds of sale of forfeited property.

The addition of this provision could also affect the order of payment on other liens, the ability of other lienholders to collect, and could have an effect on the movement of merchandise. Thus, it would appear desirable to study the need for and the effect of this provision prior to reaching any final conclusions.

Mr. Chairman, that concludes my formal statement. I shall be pleased to answer any questions you and the members of the subcommittee may have.

[The prepared statement of Mr. Schaffer concerning H.R. 5418 follows:]

STATEMENT OF ROBERT P. SCHAFFER, ASSISTANT COMMISSIONER OF CUSTOMS (COMMERCIAL OPERATIONS)

Mr. Chairman, I am pleased to be here today to offer the views of the United States Customs Service on H.R. 5418, the Customs Brokers Act of 1984.

The bill would amend Section 641 of the Tariff Act of 1930 to strengthen and clarify the authority of the Customs Service to regulate customs brokers. It would also require brokers to exercise greater diligence in supervising the operatings of their employees.

As this committee is well aware, the Customs Service has been working with the National Brokers Association for several years in an attempt to reach a mutually agreeable solution to the necessary updating of section 641 of the Tarriff Act. The proposed legislation which is before you represents-in large measure-that agreed upon solution. Unfortunately there are several areas where we simply have not reached full agreement. Before discussing these areas, however, I would like to highlight some of the more significant areas where we do agree.

A new subsection (b)(3) of Section 641 would reduce from two to one that number of individual licensed brokers required in a brokerage firm in order to qualify that firm for a corporate brokers license. The Custom Service agrees that the requirement for two individual licensed brokers has denied the legal advantages of incorporation to sole practitioners and has encouraged the undersirable practice of "leasing" licenses, in which an individually licensed broker allows himiself to be designated as the second member of a brokerage firm in which he has no real interest or involvement. New Subsection (b)(5) would extend from 60 to 120 days the period allowed to a corporation which has lost its licensed broker to employ a new individual licensed broker.

A new subsection (b)(6) provides, for the first time, monetary penalties for practing customs brokerage without a license. This provision is obviously important to ensure that only qualified persons hold themselves forth to the public as competent to conduct customs business.

A new subsection (c) would require that a brokerage firm obtain a permit from the Customs Service in each district in which is conducts operations. Statutory provision for this permit approach is needed in order that the Customs Service can end the current regulatory requirement that a brokerage, firm have a separate license in each district in which it operates. Under the proposed permit system, a broker, whether individual or corporate, who qualifies for a license would be granted a national license, and would upon meeting certain minimal qualifications, be given a permit in each individual district in which he desires to have his firm operate. The chief requirements of the Customs Service precedent to granting a permit would be that the district director is informed that the broker is commencing operations in that district, that the broker have a place of business in that district, and more important, that there be a regularly-employed, individual licensed broker to supervise operations in that district. For each permit issued there would have to be a full-time broker to supervise operations conducted under that permit. As in the case of corporate licenses, district permits would lapse if for a continuous 120-day period there is no individual licensed broker. The new requirement that there be an individually licensed broker supervising the brokerage operations in each district in which a Customs broker conducts business should, in our view, improve the quality of services offered the public and the management of brokerage businesses.

A new subsection (d) provides for disciplinary proceedings. In addition to specifying the conduct which warrants disciplinary action and procedures to be followed in taking such action, the bill provides, for the first time, for monetary penalties to be imposed for misconduct. Under the current law, violations of customs law or regulations can only be punished by suspension or revocation of a broker's license. This is a very unwieldy sanction which Custom is reluctant to invoke, because in today's commercial world, license suspension for even a few days can cause a broker to lose valuable clients forever.

The provision for monetary penalties give Customs a more flexible disciplinary instrument, which can be applied without the risk of unforeseen severe damage to a broker's livelihood which is out of proportion to the offense committed.

A new subsection (g) would require brokers to report triennially to the Secretary of the Treasury as to whether they are still in business and under what name. Currently, the Customs Service has no means for knowing when a broker has gone out of business, or how many brokers are in business. This provision would give us a means for acquiring this information. A new subsection (h) would provide for fees to cover the cost of administering the broker licensing system.

The first area where we would suggest alternative language to that advocated by the brokerage community involves subsection (d) of the proposed bill relating to disciplinary proceedings. Initially we believe that additional language is required in paragraph (1) to make it clear that disciplinary action is applicable not only to actions by the licensed broker but also to action by any person associated with the broker by reason of employment or because of a substantial financial interest in the broker's customs-related business. This suggested addition follows the approach taken in current statutory regulation of securities brokers. (15 U.S.C. 78o). While we realize that the analogy between securities brokers and customs brokers is not perfect, there are many similarities.

As this Committee is well aware, customs brokers and their employees handle large sums of money, have access to a wealth of confidential business information, and the nature of the activity presents a wide range of opportunity for fraudulent conduct by a person who is so inclined. As the Customs Service moves forward into the age of computerization and greater selectivity in entry processing, we believe it more critical than ever that both we and the importing community be able to rely on the integrity and discretion of both the broker and its employees.

We would also amend the disciplinary section to add a provision which basically tracks the language of the current law to allow the Secretary to discipline a broker when such broker has knowingly deceived, mislead or threatened any importer, claimant or client in the course of the brokers Customs business. We certainly agree with the effort reflected in the current proposed section on discipline to set forth in greater detail the types of situations where disciplinary action is appropriate. Indeed much of the language in H.R. 5418 reflects our suggestions. At the same time, however, we believe it necessary to include this more general formulation in order to cope with unforeseen problems. More importantly we are very concerned whenever a broker uses his position as a licensee of the Customs Service to deceive, mislead or threaten a member of the public. The language which we would add has been the law for many years and we are unaware of any abuse of this general language by the government, and see no reason to delete these provisions.

A second area of disagreement relates to the requirement in the proposed bill for the use of an Administative Law Judge instead of a customs officer for hearings. We believe that this would be an unnecessary expense and that it would be less desirable than the current system. First, we are not aware of any difficulties with the current use of an appropriate Customs officer as the hearing examiner. Second, the hearing examiner only makes a recommendation which is subject to reveiw both by the Department and the courts. If any deficiencies arise in the hearing procedure, the Secretary or the courts are in a position to rectify that problem. In addition, we currently average less than one such hearing per year and we don't envision any significant increase under the new legislation. If anything, the ability to assess an intermediate monetary penalty would argue for even fewer revocation hearings in the future. Thus, it would be totally impractical for Customs to hire its own ALJ, which would then necessitate using someone from another agency who would be totally unfamiliar with Customs laws and regulations. In our view such a situation would increase the risk of an arbitrary recommendation and runs counter to the efforts of the Congress to place decision making for such issues with those who are familiar with the subject matter.

In addition to these concerns, we would also observe that two provisions have been included in the proposed legislation which do not directly relate to the question of broker regulations. Section 10 of the legislation would allow for refunds prior to liquidation. We strongly oppose this section as it is currently drafted. As drafted the provision would allow for refunds "whenever it is ascertained that excess duties have been deposited". In our view this is the purpose of liquidation. To add this separate process would only create a two-tiered system which would be difficult to control, add much extra work and would run only to the benefit of importers and not the government which would still be required to await liquidation to collect increased duties. At the same time, we recognize that in certain situations large overpayments are made inadvertently and in some of these situations, for example where liquidation is being withheld pursuant to instuctions form the Commerce Department, it would be desirable to have some means to rectify the problem before liquidation. Thus, we would be prepared to support this provision if it were limited to situations involving manifest clerical error and we would suggest the language found in H.R. 5535 as a substitute for the language in section 10.

Section 9 of the proposed legislation also causes some concern. We are unsure as to the type and nature of liens which brokers might possess under the statutes or common law of the various states, and whether the differences between the states, or the difficulty in determining the "common law" might not result in confusion or a lack of uniform treatment. It might also be necessary to amend various other provisions of title 19, for example section 1613 relating to the disposition of the proceeds of sale of forfeited property. The addition of this provision could also effect the order of payment on other liens, the ability of other lienholders to collect, and could have an effect on the movement of merchandise. Thus, it would appear desirable to study the need for and the effect of this provision prior to reaching any final conclusions.

Mr. Chairman, that concludes my formal statement. I shall be pleased to answer any questions you and the members of the Subcommittee may have.

Mr. FRENZEL. I want to thank the witness and the Service for its testimony and for its work in trying to put this particular bill together with the industry. We have had this area of law around for a long time.

Trade has increased 10-fold in about 10 years. Obviously, it is occasionally useful to revise the law so that we can do the things we need to do in terms of getting merchandise in and out of the country.

With respect to your first criticism, that disciplinary section, isn't it kind of a lockstep to jump to SEC matters? Is there something of a great problem there that you would need to discipline everybody in sight?

Mr. ABBEY. Mr. Frenzel, we weren't attempting to discipline everybody in sight, but it certainly is the position of the Customs Service that we would like to keep the customs brokerage business free of criminal elements and organized crime.

Admittedly, we haven't had a problem in that area, but we saw it as an area where it was certainly possible for organized crime to enter, where there were business documents, business information with respect to movement of cargo.

It looked to us like something which, for the benefit of the country, which could be filled by this additional amendment.

Mr. FRENZEL. I think it is an interesting point. On the other hand, organized crime can enter the business of peddling gasoline and selling groceries as well. It seems to me that you are zeroing in on an industry in which, as far as we know, there hasn't been a problem.

My guess is if there is a problem, you and I are going to be the last to know of it, and it seems to me that you are overreaching here, but I think it is an interesting point that I hope we will be able to work on.

With respect to your criticism on the administrative law judge, is it not the practice of many agencies in Government to use an administrative law judge, and do they not prevent rather more expensive appeals to the court system when they are used properly?

Mr. ABBEY. Well, that was certainly the purpose. We have had one appeal to the court system from a decision of the Secretary in the 18 years that I have been working with the Customs Service, under the present situation.

I correct that, we have had two appeals. In the first appeal, the court was critical of our using the district director who had also proposed the action as the hearing officer, and rightfully so. And that has been corrected, so that we use as a hearing officer a district director or customs official from a totally different part of the country.

The customs officer is simply a hearing officer. The full record, which is a recommendation I might add, is submitted to the Secretary of the Treasury, who reviews it very carefully inasmuch as the sanctions that we are permitted to take now are extremely harsh and consequently are not applied frequently. But in view of the protections afforded the brokerage industry, it seemed to us that adding an administrative law judge was just unnecessary and would not afford any additional fairness that is not contained in the existing law.

Mr. FRENZEL. If I am going to protest a ruling of an agency, I find it a little disconcerting to find out that the objective, unbiased hearing examiner that I go to is an employee of the Service and may have worked in that district yesterday or may be assigned to it tomorrow, and is trying to render judgment on the decisions of his peers and associates and good poker buddies.

Wouldn't you be a little nervous about that?

Mr. ABBEY. I would certainly, if I were in your position, or in the position of the industry, be concerned about that, but I do think we have a record to fall back on, and as in other areas where it has been suggested that there is no change needed because of a good record in administering the law, I feel we are in the same position here. But I can understand where others would look at it from a different point of view and see that an administrative law judge might be beneficial. On the other hand, if the administrative law judge had more authority in terms of the initial decision, I might agree, but since the Secretary of Treasury has to review that record and that record is reviewable from a standard of arbitrary and capriciousness, I think that the existing law is satisfactory.

Mr. FRENZEL. Well, I thank you. I guess I think the value of the ALJ is that he or she approaches the problem with less baggage of experience, friendship and knowledge than a member of the Service.

Without criticizing the Service, in fact, I would be praising the Service if I would say that its employees tend to stick together and work in concert. It seems to me that is parenthetical to the idea of a free hearing, but without belaboring that, Mr. Chairman, the complaints about the refund prior to liquidition, that is a permissible item, not a mandatory item, is that not correct?

Mr. SCHAFFER. Yes.

Mr. ABBEY. It is permissible, but in the past, there has been a great deal of litigation.

Mr. FRENZEL. Do you feel a one-man broker house would put intolerable pressure on the Customs Service?

Mr. SCHAFFER. We never know, Congressman.

Mr. ABBEY. They are tough.

Mr. FRENZEL. I agree with you that the lead question is the difficult one and does need some studying and we are grateful for all the input you have put into this.

Mr. SCHAFFER. Mr. Chairman, before we do conclude, I would like to commend the National Customs Brokers and Forwarders Association for all the help they have been in formulating this bill. It is their bill that was introduced. We are very pleased to have worked with them on this effort that is long overdue.

Mr. FRENZEL. The compliment is well-taken. Although my name appears on the bill, it is obviously the work of that association and your Service that put together what we have at the moment, but I want to disabuse you of the notion this is ending.

I have a couple of questions, one relates to the disciplinary area, the Service is given some latitude in determining penalties; and can you give the committee an idea as to how you might structure a list of penalties?

And I would say you don't have to do it at this moment, and if you would like to respond for the record, I would ask you not to take too terribly long, the Congress is going out of session, so you have some time to think about that. I think this committee would like to know in general what your feeling is.

And second, can you give the committee some guarantee that if the bill would be passed, you would have interim regulations on paper by the time the bill would be effective, which in present form, would be 180 days after passage?

Mr. SCHAFFER. Yes, sir, we can. In fact, we already have draft regulations which cover much of the language that is already contained in the bill.

Mr. FRENZEL. Maybe that is some of the information in general. The bill requires triannual reports from brokers saying that they still want to be a broker tomorrow.

Is it possible that the Service will be able to jog the memories prior to the renewable dates of the brokers ?

Mr. ABBEY. Yes.

Mr. FRENZEL. I assume you would send them some kind of form, let's renew your license tomorrow?

Mr. SCHAFFER. We didn't intend to send out a notice.

Mr. FRENZEL. Would it be a terrible burden on the service?

Mr. SCHAFFER. Yes, it is hard for us to keep those records right now.

Mr. FRENZEL. I think that one of the reasons for writing the bill is that it is a problem.

Mr. ABBEY. We had set a date certain so that it would not be a difficult matter to know that every few years it will be necessary to notify us that they are still doing business. That is what we have, I believe, in our regulations.

Mr. FRENZEL. I notice sometime before April 15 the IRS manages to remind me by shipping me a form that I have an annual obligation. I think the same would be warranted in this case. It is only a triannual obligation, and I would like to discuss this with you at length a little later.

The bill requires there be more brokers on station than is now demanded by the law. You cannot have an unbrokered attended office. Can you give us an idea as to how long it might take to permit a broker?

Mr. SCHAFFER. Right now we have delegated some additional authority to our field offices to expedite that process, and it is a relatively short period of time to conduct an investigation. I could not give you a fixed time period, but I would say on an average, it would run between 60 and 120 days.

Mr. FRENZEL. If you are a broker wanting to establish a new office with a customer and merchandise to move, 120 days can be an eternity. What would take that down some?

Mr. SCHAFFER. Well, part of it is required for the investigation conducted by our Office of Investigations, and there are certain other requirements.

Mr. ABBEY. I don't want to take major issue with Mr. Schaffer, but I think it is a relatively quick system, lot faster.

Mr. FRENZEL. I think he is talking about a new problem.

Mr. ABBEY. Oh, you are talking about the one that already exists.

Mr. FRENZEL. Can the Service assure us that that will occur?

Mr. ABBEY. That certainly was our intention. We were the one that suggested the permit system. It would permit better regulation of brokerage offices. If there was a problem in one office, then we could remedy or work with the broker to remedy that problem and not have to deal with the national license.

Mr. FRENZEL. In submitting your additional remarks, it might be a good idea to give us targeting figures on how soon you could do the average application for one of these.

Mr. ABBEY. We would be happy to.

[Customs responded as follows:]

Customs expects district permits for brokers to be issued within 30 days after receipt of all necessary documentation and in the absence of extraordinary circumstances.

Mr. FRENZEL. We would like that to be very quickly. We assume that the brokerage firm itself is OK to begin with, and all we are doing is assuring ourselves that there is a broker on location.

Mr. ABBEY. That is correct.

Mr. FRENZEL. Mr. Chairman, again, I want to thank the service. I want to thank the association and hopefully we will be able to get at this bill relatively quickly.

Chairman GIBBONS. All right, and perhaps we can have a markup on this one and maybe some of these things could be worked out. I hope that the administration and the industry will work together to try to minimize the differences in the markup.

Let's go on to the next bill. I don't want to keep these out-of-town people waiting any longer than we already have.

STATEMENT OF ARTHUR I. RETTINGER, ATTORNEY, OFFICE OF THE CHIEF COUNSEL, U.S. CUSTOMS SERVICE

Mr. RETTINGER. OK.

The next bill will be H.R. 3159.

Chairman GIBBONS. That is my bill. You don't need to explain it to me too much. Go ahead. You are for it, aren't you?

Mr. RETTINGER. We are very much for it. That has not changed.

[The prepared statement follows:]

STATEMENT OF ARTHUR I. RETTINGER, ATTORNEY, OFFICE OF THE CHIEF COUNSEL, U.S. CUSTOMS SERVICE

Mr. Chairman, on November 15, 1983, I came before this subcommittee to present the strong support of the administration for passage of H.R. 3159 which would overturn the effects of the *Heraeus-Amersil* case decided by the Court of Customs and Patent Appeals on February 18, 1982. In that decision, the Appeals Court affirmed a Court of International Trade decision that increased or additional duties determined to be due on a liquidation or reliquidation need not be paid by the importer until either the protest period of 90 days has expired without the importer filing a protest, or where a protest was filed and denied, 180 days has expired after the denial of the protest.

In my prior testimony, I indicated that the *Heraeus* decision invalidated a Customs regulation (19 CFR 24.3(3)) which had provided that all such bills were due and payable within 30 days of the liquidation or reliquidation, and was having a severe impact on Customs ability to collect such increased or additional duties. In addition, it was expected that importers and/or sureties would abuse the protest provisions of section 514 of the Tariff Act in order to gain at least 9 months and perhaps 2 to 3 years additional time, free of interest, for use of monies due to the United States Treasury. I am sorry to say that our worst fears are being realized.

I testified in November that Customs protests had increased approximately 30 percent in the prior 2 years and that that increase had hampered Customs ability to respond to protests. In the 4 years prior to the *Heraeus* decision, Customs averaged less than 34,000 protests per year. In fiscal year 82, protests rose to over 40,000, and in fiscal year 83 to over 42,000. While the Customs Service is striving to become more efficient, it is difficult to respond to that number of protests in a reasonable fashion. This flood of paper has inundated our import specialists and protest and liquidation units and will ultimately result in slower processing time for normal entries, affect manpower available for trade and enforcement programs, and, one may presume, increase the caseload of the Court of International Trade as protests wind their way through the administrative to the judicial process.

While protests against liquidation increases have risen dramatically, the amount of unpaid accounts currently tracked by the Customs Service has risen even faster. In December 1981, Customs had approximately $15.1 outstanding on increased or additional duties which had not been paid for at least 90 days. In April of 1984, this figure stood at $78.9 for an increase of 422 percent. In April of 1984, supplemental duty bills over 30 days old stood at $95.4, a rise of 363 percent over the December 1981 figure of $20.6 For purposes of comparison, the total value of supplemental duties issued in fiscal year 1983 was $179. This figure has remained relatively constant for the last 3 years. However, supplemental duty bills over 30 days old constitute more than half of the supplemental duty bills issued, and unpaid bills over 90 days old constitute more than 44 percent of the bills issued in fiscal year 1983.

In its prepared testimony in opposition to this bill for the November hearings, the Joint Industry Group indicated that the need for H.R. 3159 was questionable. However, we believe that point 9 of their statement actually substantiates the need for H.R. 3159, I quote:

"Most increased duties are paid promptly. Statistics for 1976–1977 showed only 13 percent of increased duties unpaid 60 days after liquidation."

It is important to note that in 1976–1977, the regulation invalidated by the *Heraeus* case was in effect and importers, for the most part, paid their bills timely and protested only for good cause. If for some reason the need for this legislation was questionable in November of 1983, it no longer questionable now, and the dramatic rise in protests as well as unpaid bills is just beginning. The longer we wait for the change in the legislation the greater will be the loss to the government in interest on unpaid amounts rightfully due to government, manpower and diverted resources to maintain and track hundreds of thousands of protests and open accounts, and the time and expense to the Court of International Trade in dealing or responding to the overflow.

This is a situation actually evisioned by the Court of Customs and Patent Appeals in its decision affirming the *Heraeus* case. The last words of that Court appear in Footnote 7, and I read them to you in their entirety because of their direct relevance to this proposed legislation:

"It may be true, as appellant posits, that some importers will routinely file protests against increased duties on the 90th day after liquidation, await a Customs Service decision, and then delay payment for another 180 days, thereby obtaining interest-free use of monies otherwise owed the government. Nevertheless, the policy considerations underlying to the need for reform in this context, if reformed be required, must be addressed by Congress."

The Court of Customs and Patent Appeals suspected that reform may be required. That reform is required. H.R. 3159 provides that reform and provides it in such a manner as to meet the needs of the Customs Service while providing a balance to the importing public in the form of a return of interest, at the same rate otherwise payable by the importer, for such increased or additional duties returned due to a protest or court decision. This returning of interest is a benefit to importers which was not available prior to *Heraeus*, and would not be available without this legislation. The Treasury Department understands that there are certain objections or questions concerning H.R. 3195, unrelated to the policy grounds or considerations concerning its need, which we would like now to address. We understand that there is concern that the 25 days specified for payment of increased or additional duties prior to interest attaching is insufficient time for the importer to respond. We appreciate this concern and note that the Treasury need is for a date certain upon which payment will be made or interest will attach, and consequently would accept an amendment to the bill raising the 25 days to 45 days. Under this amendment, interest will be payable beginning from the 15th day after the date of liquidation or reliquidation but no interest will be required for the 30 day period within which payment is actually made. This change would not require importers to pay interest on any time period they did not have actual use of their money, and would also allow Customs to issue bills, at 30 day increments, which would be able to specify the exact sum payable, by that importer during that period.

We note that several of the parties scheduled to testify in November were concerned with the retroactive provisions of H.R. 3195. While the Treasury Department would still prefer this mechanism in order to "clean up" the outstanding bills, in order to secure passage of the bill, we are willing to accept a compromise that it will be applicable only to those importations entered, or withdrawn from warehouse for consumption, after the date of enactment of the bill.

The Joint Industry Group, as well as others scheduled to testify in November suggested that section 2 of H.R. 3159 be amended to require government payment of interest of any amount refunded, not merely the increased portion thereof. As I noted in November, the bill in no way affects overpayments or underpayments of estimated duties as these payments traditionally have been recognized as separate and distinct from liquidations for refunds or liquidations involving additional assessments. Customs neither pays interest on liquidations for refunds nor requires interest to be paid on underpayments of estimated duties which are accepted by a Customs officer. Consequently, we do not believe that any change in section 2 of the bill is necessary. However, if any change to section 2 is considered to require the government to pay interest on overpayments of estimated duties, it should similarly require the importer to pay interest, from the date of entry, or withdrawal from warehouse for consumption, of underpayments of estimated duty ultimately determined to be due on a liquidation or reliquidation. In all fairness, however, we believe the government will get the best of that bargain.

Finally, several bar associations as well as the Joint Industry Group, suggested that the bill might be amended to provide for payment after consideration of the importer's protest by the Customs Service. This change is not acceptable to the Treasury Department for the simple reason that it will continue to encourage protests by importers, sureties, or their brokers or attorneys, as a method of postponing payment of increased or additional duties without payment of interest.

I thank you for your time and consideration.

Chairman GIBBONS. We can go to the next bill then.

We can discuss that in markup if nobody is opposed to it.

Go ahead, the next bill, Mr. Wyden's bill, No. 5625.

Mr. BARTOL. Yes, sir; I am Robert Bartol, the U.S. Customs Service, sir.

Chairman GIBBONS. You are not talking into the mike.

Mr. BARTOL. Can you hear me now, sir?

Chairman GIBBONS. Fine.

STATEMENT OF ROBERT A. BARTOL, DIRECTOR, OFFICE OF WORKFORCE EFFECTIVENESS AND DEVELOPMENT, OFFICE OF INSPECTION AND CONTROL, U.S. CUSTOMS SERVICE

Mr. BARTOL. I am Robert Bartol, U.S. Customs Service. We appreciate the opportunity to offer the views of the U.S. Customs Service on H.R. 5625, which would expand the Portland, OR, Customs District to include the southern counties of the State of Washington and the lower two-thirds of the State of Idaho.

There are no Customs ports within the area which would be included by this bill in the Portland District, which is in the Customs Pacific region. However, the Customs Service does plan to establish a temporary Customs station at Boise, ID, which is within the expanded area. This location is currently within the Great Falls, MT Customs District which is in the Customs north central region.

From what we know of the international commerce affecting the Boise area and of the ties between the two Idaho ports of entry and Boise, we believe that the current administrative alignment should be retained.

The two Idaho ports, East Port and Port Hill, located on the Canadian border, are in the Great Falls Customs District. If the State of Idaho is divided into two Customs districts as a result of this bill, Boise and the two Idaho ports will have to deal with different Customs districts and regional management.

This will be confusing to the customs employees in Boise and also inconvenient to businessmen who will have to deal with one Customs district in getting their merchandise released at the border and with another in getting their merchandise appraised and liquidated.

With respect to the Washington State territory affected by this bill, all of which is now within the Seattle Customs District, we could accommodate transfer of this territory to the Portland District which the bill would rename the Columbia/Snake River District. This area in southeast Washington includes all of the counties of Walla Walla, Columbia, Garfield, and Asotin. Since there is virtually no Customs activity in these counties, the administrative change would have little disruptive effect.

Mr. Chairman, that concludes my statement.

[The prepared statement follows:]

STATEMENT OF ROBERT A. BARTOL, DIRECTOR, OFFICE OF WORKFORCE EFFECTIVENESS AND DEVELOPMENT, OFFICE OF INSPECTION AND CONTROL, U.S. CUSTOMS SERVICE

Mr. Chairman, I am Robert Bartol. We appreciate the opportunity to offer the views of the United States Customs Service on H.R. 5625, which would expand the Portland, Oregon, Customs district to include the southern counties of the State of Washington and the lower two-thirds of the State of Idaho.

There are no Customs ports within the area which would be included by this bill in the Portland district, which is in the Customs Pacific region. However, the Customs Service does plan to establish a temporary Customs station at Boise, Idaho, which is within the expanded area. This location is currently within the Great Falls, Montana, Customs district, which is in the Customs North Central region. From what we know of international commerce affecting the Boise area, and of the ties between the two Idaho ports of entry and Boise, we believe that the current administrative alignment should be retained. The two Idaho ports, Eastport and Porthill, located on the Canadian border, are in the Great Falls Customs district. If the State of Idaho is divided into two Customs districts as a result of this bill, Boise and the two Idaho ports will have to deal with different Customs district and regional management. This will be confusing to Customs personnel in Boise and will be inconvenient to businessmen who will have to deal with one Customs district in getting their merchandise released at the border and with another in getting their merchandise appraised and liquidated.

With respect to the Washington State territory affected by this bill, all of which is now within the Seattle Customs district, we could accommodate transfer of this territory to the Portland district, which the bill would rename the Columbia/Snake River district. This area, in southeast Washington, includes all of the counties of Walla Walla, Columbia, Garfield, and Asotin. Since there is virtually no Customs activity in these counties the administrative change would have little disruptive effect.

Mr. Chairman, that concludes my statement.

Chairman GIBBONS. Are you for it or against it?

Mr. BARTOL. Against it.

Chairman GIBBONS. Thank you.

Do any of my other colleagues have questions?

Mr. PEASE. Maybe we could expedite this even further by having the witnesses nod either yes or no.

Chairman GIBBONS. That happened on the DISC tariff bill a few years ago. Everybody in there was calling it only a deferral and were winking. The reporter didn't get the winks, and now it is a big problem because the reporter didn't pick up the winks. Everybody really knew it was a forgiveness. Very few except Mr. Corman and myself called it a forgiveness. So we can't have head movements in the record or "movements" either.

Mr. ABBEY. If I just may point out one thing with regard to the Snake River bill, Mr. Gibbons. If such a bill were enacted, it would be the only statutory Customs district.

Chairman GIBBONS. I don't know. The Tampa Customs District is a statutory district established in 1859 under petition of the Florida Legislature. It was acted on by the Ways and Means Committee. I wasn't here at that time. Somebody cleaning out the Capitol the other day found that and gave it to me.

Mr. FRENZEL. Whereupon, you issued a press release.

Chairman GIBBONS. I sent it to the Historical Society.

Mr. ABBEY. Even standing corrected, I don't believe currently we have any.

Chairman GIBBONS. We haven't done it to you recently.

Mr. ABBEY. No.

Chairman GIBBONS. Well, relax, we may.

They think this is a good bill. What is wrong with it? Why don't you want a district out there?

Mr. ABBEY. Well, there are already districts out there.

Chairman GIBBONS. There must be some problems with the existing districts. When we hear from Mr. Wyden we will find out about that. Have you all talked with him about this?

Mr. BARTOL. Yes, sir; but I was not present at the meeting. Representatives of Customs talked with him.

Mr. FRENZEL. Mr. Chairman, I think the allegation is that the proposed district follows the boundaries of a natural trade area which conform at least somewhat to natural transportation on the river or natural boundaries. Don't you believe that is true?

Mr. BARTOL. Based on the current work loads, no, sir. The problem with the current bill is that it does cross State lines and the current work load that we are experiencing in Boise and East

Point and the northern border as it is relating to Canada, not to Portland.

Mr. FRENZEL. Does your testimony submitted for the record contain information on the work load variance?

Mr. BARTOL. No, sir; none.

Mr. FRENZEL. It would be a good idea to print that on the record.

Mr. Chairman, I would ask permission to have that included in the record.

Chairman GIBBONS. All right, fine.

[Additional material was not received in time to be included in the printed record.]

Chairman GIBBONS. Thank you very much. This completes the administration on this.

For now let me suggest to the staff it may be easier if we hear the proponents of these and understand what these bills are a little better before we hear the administration in the future on all these bills. Let the proponents state the needs, and then let the administration come in and shoot them down.

OK. We have got Mr. McKinney here. Come up and tell us about your bill.

STATEMENT OF HON. STEWART B. McKINNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. McKINNEY. If you don't see me, I can't get in trouble.

Chairman GIBBONS. You don't seem to be in trouble. The administration supports your bill, and we have got the Air Transport Association.

Mr. McKINNEY. I have Mr. Joseph Berg and Mr. Paul Hyman.

Chairman GIBBONS. Why don't we get them to come forward at the same time?

Now in your oral statements, if you all would very briefly state what the need is and how your bill fulfills that need. We are going to have Mr. Stanley Nehmer right behind you, and he is going to shoot you down.

Mr. McKINNEY. Mr. Chairman, realizing the constraints of your time, I have a very, very short statement.

Chairman GIBBONS. All right, sir. Any long statements we will put in the record.

Mr. McKINNEY. I am delighted, needless to say, to be here with Mr. Joseph Berg, president of Air Express International, and Mr. Paul Hyman, director of the cargo services for the Air Transport Association on behalf of H.R. 4178.

H.R. 4178 is a bill I introduced on October 20, 1983, as a companion to S. 1184 introduced by Senator Spark Matsunaga and now a part of H.R. 3398, a bill awaiting floor action in the Senate. Our bills increase the value of goods eligible for informal customs entry into the United States. As you know, informal entry follows the consignees to pay duties and obtain imported goods whose value does not exceed the legal limit at airport customs stations without the extensive paperwork and lengthy delay otherwise required. Since 1953, the value limit on informal entry has been $250. Although inflation has reduced the value of the dollar, no adjustment has been made in the informal entry limit. As a result, goods that at one time qualified for informal entry must now go through more cumbersome procedures.

Section 205 of H.R. 3398 increases to $1,000 the value of goods eligible for informal entry. During consideration of H.R. 3398 by the Senate Finance Committee, concerns were raised that increasing the informal entry level would result in statistical discrepancies with respect to data on import sensitive goods and make monitoring more difficult. To solve this problem, the Senate Finance Committee adopted amendments which exempt certain leather related products, textiles and apparel from the informal entry ceiling increase. I support the amendments adopted by the Senate.

In addition, H.R. 3398 increases the informal entry limit to $1,000 while H.R. 4178 increases the limit to $1,500. While I feel the higher limit is more appropriate, I would not object to the limit being set at either $1,000 or some figure between $1,000 and $1,500.

Since the Senate committee action, a further concern has been raised regarding the Census Bureau's responsibility to publish all data for formal entries in its regular published statistical series. I share this concern and believe a clarification would be helpful. Without complete statistical information regarding these import sensitive goods, we will be unable to adequately monitor the impact of imports on U.S. textile and leather products industry.

Rather than amending the bill further, however, I prefer placing clarifying language in the committee report. This procedure would avoid complicating a noncontroversial bill with matters which may be within the jurisdiction of another House committee, while clarifying our understanding of the U.S. Census Bureau's statistical reporting responsibility.

Mr. Chairman, this noncontroversial bill will relieve the hardships of inconvenience, delay and expense on small importers and the air freight industry. Most members of the air freight industry are involved in international trade. An increase in the informal entry ceiling would result in reduced paperwork and excessive brokerage fees which endanger the small businessman's viability.

H.R. 4178 will also relieve any unnecessary burden on the U.S. Customs Service which must deal with this complex and unnecessary bottleneck on a limited budget. I urge the subcommittee to adopt this measure in order to relieve the burdens and delays which now exist.

Thank you.

Chairman GIBBONS. Thank you.

We appreciate you bringing this to our attention. As I said, the administration says they have a few technical amendments to it, but other than that, it seems to be all right.

The Air Transport Association, Mr. Hyman.

Mr. HYMAN. Mr. Chairman, I have a formal statement which I would like to put in the record.

Chairman GIBBONS. Let's put the formal statement in the record.

STATEMENT OF PAUL HYMAN, DIRECTOR FOR CARGO SERVICES, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. HYMAN. My name is Paul Hyman. I am the director for cargo services for the Air Transport Association. Our membership is comprised of 34 air carriers, many of which carry air freight in international commerce and have a keen interest in the flow of airborne international trade.

For example, last year the value of goods and equipment moved by air to and from the United States exceeded $83 billion, and the rapid movement of these goods from the shipper to consignee, especially for imports, is often impeded by archaic customs procedures and rules.

The members of ATA encourage the streamlining of customs procedures and, thus, support legislation which would increase the informal customs entry limitation from $250 to $1,500. This change will accomplish three important objectives: One, it reduces the cost of paperwork associated with importing merchandise. We have heard Mr. Schaffer of the Customs Service admit to a $10.5 million saving to the Government. There are additional savings to the small business activities and the importer which should be considered as additional to those savings to the Government.

Another objective of this legislation is to improve the productivity of the Customs Service and resulting efficiencies there. Additionally, this bill fosters international trade by simplifying the documentation for imports.

I would like to provide additional information substantiating each of these improvements that are made possible by the speed and efficiency of informal entry procedures. The absence of a customs bond, the elimination of any formal appraisement, and the flexibility provided by informal entry will reduce the Customs Service work load considerably. Raising the informal entry limit to $1,500 would eliminate thousands of formal entries each day. Also this change will permit a significant improvement in the reliability of formal entry data.

Many small shippers find the formal requirements are too complicated and delays in paperwork are frustrating, so rather than go through these trials and tribulations, they seek alternative sources and often have to incure additional costs.

In recent years the air delivery within the domestic market has boomed offering many opportunities for both large and small entrepreneurs to function with minimal investments. This has been dampened somewhat by the existing $250 limit set in 1953. This threshold is insensitive both to inflation and is unresponsive to the growing demands for international commerce.

We are talking not only about imports but exports can be affected here too because many components for high-tech and industrial products are assembled in this country, where they at first involve imports from foreign countries, and it would be of significant benefit if we had a more simplified informal entry procedure for these components

In conclusion, the ATA strongly supports the provisions in H.R. 4178 to increase the current informal entry limitation in order to better facilitate the flow of air cargo into the United States.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Thank you.

[The prepared statement follows:]

STATEMENT OF PAUL HYMAN, DIRECTOR FOR CARGO SERVICES OF THE AIR TRANSPORT ASSOCIATION

My name is Paul Hyman, Director for Cargo Services of the Air Transport Association of America. Our membership is comprised of 34 air carriers, many of which carry air freight in international commerce and have a keen interest in the flow of international airborne trade.

During 1983, the value of goods and equipment, moved by air to and from the U.S. in international air freight, exceeded $83 billion. The rapid movement of these goods from shipper to consignee, especially for imports, is often impeded by archaic Customs procedures and rules.

The members of ATA encourage the streamlining of Customs procedures, and thus, support legislation which would increase the informal Customs entry limitation from $250 to $1,500. This change will accomplish three important objectives:

1. It reduces the cost of paper work associated with importing merchandise;
2. It improves the productivity of Customs Service workload processing with resulting efficiencies;
3. It fosters international trade by simplifying imports.

I would like to provide additional information substantiating each of these improvements that are made possible by the speed and efficiency of informal entry procedures. The absence of a Customs bond, the elimination of any formal appraisement, and the flexibility provided by informal entry will reduce the Customs Service workload considerably. Raising the informal entry limit to $1,500 would eliminate thousands of formal entries each day. Also, this change will permit a significant improvement in the reliability of formal entry data.

During 1983, there were over 5.3 million formal entries filed. We estimate that ten percent or approximately one-half million entries would be eligible for informal entry under the $1,500 threshold established by H.R. 4178, thus permitting Customs Service personnel to concentrate on the approximately $8 billion in formal entries filed during 1983. The present backlog of unappraised formal entries can be better managed under the new higher informal entry limit.

In 1983, duties collected under the filing of informal Customs entry were $20.9 million. The cash flow represented by this program is rapid, resulting in little investment of government resources. Formal entry delays do not provide the most prompt payment to the Government. The higher informal entry limit will increase the volume of cash flow to the U.S. Treasury under this program.

Small business activities frequently rely on shipments of the type affected by the legislation. Raising the limit in accordance with H.R. 4178 would be of great benefit to small business. Many small shippers find that formal entry requirements are too complicated. The delays and paperwork can also frustrate the importer waiting for the goods. Rather than go through the trials and difficulties of formal entry requirements, they will consider alternative sources or incur the costs of expert forwarding and facilitation agents. These costs may discourage international trade and especially small business involvement in international trade.

In recent years, air delivery of package merchandise within the domestic market boomed, offering many opportunities for both large and small entrepreneurs to operate with minimum inventory investments and expertise. The international movement of parcels has been dampened by the existing $250 limit for informal Customs entry. Established in 1953, this threshold is insensitive to inflation and unresponsive to growing demands for international commerce from all sectors of our economy.

International trade exports and imports will benefit from an increased informal entry limit. Many components for high technology and industrial products assembled in the United States for export are first imported from foreign countries and would benefit significantly from more simplified informal entry procedures. The top ten categories of airborne exports from U.S. industries in 1983 include: computers, electrical machinery, scientific instruments, power generating machinery, aircraft, spacecraft, and telecommunications equipment. The import and export of electrical machinery and parts alone were valued at over $14 billion last year. With this commodity and computers, many of the components which are imported are used to generate still other exports.

With regard to the commodities impacted by this change, we understand that Customs entry limits on shipment of textiles and leather merchandise would not be altered by the provisions of H.R. 4178. To the extent that language in H.R. 3398 defines clearly that status quo will be maintained on the requirements for formal entry for textiles and leather, it may be appropriate to incorporate the commodity definition as outlined in H.R. 3398, a bill to change the tariff treatment with respect to miscellaneous articles.

In conclusion, the Air Transport Association strongly supports the provision in H.R. 4178 to increase the current informal entry limitation in order to better facilitate the flow or air cargo into the United States.

Chairman GIBBONS. Mr. Berg.

STATEMENT OF JOSEPH BERG, PRESIDENT, AIR EXPRESS INTERNATIONAL CORP., AND PRESIDENT, AIR FREIGHT ASSOCIATION

Mr. BERG. Thank you, Mr. Chairman.

I am Joe Berg. I am here in a dual capacity today as president of Air Express International, a large international company, and Air Freight Association of America. We operate our own aircraft internationally and also purchase space from scheduled air carriers.

I am encouraged to hear that we have received support from both U.S. Customs and the Department of Commerce. Our position is clearly outlined in our exhibit, but I would like to stress a few points.

I have been in the industry 34 years as my gray hair attests. I have seen the present system continue, and it wastes time and it is very costly.

If no proposal is adopted, large States, for example, Minnesota, would have special benefits. Today a consignment comes for a farmer in outlying Minnesota, comes into New York, and would then be sent in bond to Minneapolis-St. Paul. The farmer would receive a notice, "Please come and collect your piece." It would take probably 1 week to 10 days. You have to pay well over $100 to get that shipment cleared through Customs.

Our proposal would have that parcel and that piece at his door 1 to 2 days from departure from overseas for less than $62. I think it is a special benefit to the consignee in the United States and especially to those large outlying States where you have small men waiting for urgently needed parcels.

Thank you.

Chairman GIBBONS. Thank you, sir.

[The prepared statement follows:]

STATEMENT OF JOSEPH BERG, PRESIDENT, AIR EXPRESS INTERNATIONAL CORP., AND PRESIDENT, AIR FREIGHT ASSOCIATION

The Association is a nationwide trade organization which represents a large segment of the air cargo industry. Our members include airlines, air freight forwarders, and companies which provide both services to the U.S. shipping public. A list of AFA members is attached hereto as Exhibit I.

Most of the members of the air freight industry operate internationally as well as domestically and are therefore vitally interested in any legislation designed to ease the Customs entry process. H.R. 4178 is one such piece of legislation. At a time when budget cuts and an ever increasing number of imports threaten to swamp the U.S. Customs Service with more work than it can efficiently handle, any move to simplify customs procedures must be viewed as a positive step. Such legislation now sits before this Subcommittee and should be expeditiously approved. Introduced by Representative Stewart McKinney of Connecticut, House Bill H.R. 4178, as presently written, would amend the Tariff Act of 1930 to increase from $250.00 to $1,500.00 the amount allowed for informal entry of commercial goods.

Under the provisions of informal entry, the consignee is permitted to pay duties and obtain imported goods whose value does not exceed the legal limit at airport customs stations at the time of their arrival. In turn, reduced paperwork and lower brokerage fees (which can amount to as much as 50 percent less, if a broker is used) make informal entry a particular asset to small businesses. The inability to use this procedure on shipments with a value of over $250.00 creates an artificial, government-imposed, restriction on international trade and creates unfair and unwarranted burdens on customs personnel who are currently past the limits of their efficient capabilities.

When originally signed into law as the nation's basic customs legislation, the Tariff Act of 1930 provided for a $100.00 value limit for informal entry of commercial merchandise into the United States. This amount was increased to $250.00 in 1953 and has remained there ever since, notwithstanding the fact that significant inflation has reduced the purchasing power of the dollar to approximately one-quarter of its 1953 value. Thus, precisely the same goods which once qualified for informal entry now must be treated as a formal entry, a much more cumbersome, time-consuming and expensive process. The net result of the use of the out-dated $250.00 limit, coupled with the inflation rate since 1953, has been to violate the clear intent of the customs laws. A new, updated, limit is needed now to cure this inequitable situation.

In further support of S. 4178, it should be noted that some of our major trading partners, Canada, for example, have higher informal entry limits. In addition, other individual supporters of a change in U.S. law will undoubtedly come from the growing international small package trade, as the value of most small packages falls squarely within the $250.00 to $1,000.00 range. For example, my company, Air Express International, one of the country's major international air freight forwarders, is currently handling approximately 10,000 shipments per month from the United States under it "Interpak", or door-to-door, service, but only 500 such shipments into the United States. The major reason for this imbalance is the current $250.00 informal customs entry limit.

Finally, perhaps the most telling argument in favor of the immediate passage of H.R. 4178 is that it will assist the U.S. Customs Service in performing its functions. More informal entry results in less work for the harried agency, whose workforce is barely able to keep up with its required tasks. Therefore, the passage of H.R. 4178 will prove to be as great an assist to the Customs Service as it will to businesses, large and small, throughout the country.

Finally, it should be noted that legislation similar to H.R. 4178 has already been reported out of the Senate Finance Committee and has been consolidated in a package of non-controversial trade legislation now ready for final Senate action (H.R. 3398). The precise wording of the Senate bill, which is acceptable to the members of the Association, was written to accommodate the legitimate concerns of the U.S. textile and leather products industries and was not objected to by either of these industries (see Exhibit III). The only substantive differences between H.R. 4178 and the Senate version are that the dollar limit in the Senate bill is $1,000, not $1,500, and the items exempt from this increased limit are set forth in more detail. For the convenience of the Committee, attached as Exhibit II is an annotated version of H.R. 4178 to reflect the wording now before the Senate in H.R. 3398.

In summary, the expeditious passage of H.R. 4178 will both facilitate international trade and will improve the efficiency of the U.S. Customs Service. Therefore, the Air Freight Association strongly supports its passage as quickly as possible.

EXHIBIT I

AIR FREIGHT ASSOCIATION MEMBERSHIP LIST

AIR EXPRESS INTERNATIONAL	Darien, Connecticut
AIRBORNE FREIGHT CORPORATION	Seattle, Washington
AIRSPEED, INC.	Inglewood, California
AMERFORD INTERNATIONAL CORPORATION	Jamaica, New York
AMERICAN AIRLINES, INC.	Dallas/Ft. Worth, Texas
ASSOCIATED AIR FREIGHT	New Hyde Park, New York
THE AVIATION GROUP	Raleigh, North Carolina
BURLINGTON NORTHERN AIR FREIGHT	Irvine, California
CAM AIR INTERNATIONAL	Miami, Florida
COMBS AIRWAYS, INC.	Denver, Colorado
EMERY WORLDWIDE	Wilton, Connecticut
EVERGREEN INTERNATIONAL AIRLINES	McMinnville, Oregon
FLYING TIGER LINE	Los Angeles, California
GENERAL AVIATION, INC.	Greeneville, Tennessee
IMPERIAL AIR FREIGHT	Newark, New Jersey
INTERSTATE AIRLINES	Ypsilanti, Michigan
NORTH AMERICAN VAN LINES	New Haven, Indiana
PILOT AIR FREIGHT	Lima, Pennsylvania
PROFIT FREIGHT SYSTEM	Los Angeles, California
PUROLATOR COURIER CORPORATION	New Hyde Park, New York
SMB STAGE LINE, INC.	Dallas/Ft. Worth, Texas
SOUTHERN AIR TRANSPORT	Miami, Florida
SUMMIT AIRLINES, INC.	Philadelphia, Pennsylvania
SURFAIR	Atlanta, Georgia
TRANSAMERICA AIRLINES	Oakland, California
WTC AIR FREIGHT	Torrance, California

EXHIBIT II
p. 1 of 2

I

98TH CONGRESS
1ST SESSION

H. R. 4178

To amend the Tariff Act of 1930 to increase from $250 to $1,500 the value of goods eligible for informal entry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1983

Mr. MCKINNEY introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Tariff Act of 1930 to increase from $250 to
$1,000 ~~$1,500~~ the value of goods eligible for informal entry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498(a)(1)) is amended—

(1) by striking out "$250" and inserting in lieu
"1,000" thereof "~~$1,500~~"; and

(2) by inserting before the semicolon at the end thereof the following: ", except that this paragraph does not apply to textile goods and products valued in
classified in— excess of $250, ~~merchandise subject to quantitative~~

EXHIBIT II
p. 2 of 2

~~import restrictions, articles subject to antidumping or countervailing duties, or any other article for which formal entry is required without regard to value".~~

~~SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after the date of the enactment of this Act.~~

"(A) schedule 3,

"(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

"(C) parts 2 and 3 of the Appendix, of the Tariff Schedules of the United States, or to any other article for which formal entry is required without regard to value."

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of the enactment of this Act.

EXHIBIT III
p. 1 of 2

S. Hrg. 98-557

MISCELLANEOUS TARIFF BILLS, 1983-84

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

OCTOBER 21, 1983

Printed for the use of the Committee on Finance

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EXHIBIT III
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Senator DANFORTH. Senator Mitchell.

Senator MITCHELL. No questions.

Senator DANFORTH. Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman.

Mr. Nehmer.

Mr. NEHMER. Yes, sir.

Senator MATSUNAGA. If we should exclude textiles from the increase, would you then favor the bill?

* Mr. NEHMER. Well, sir, I am here on behalf of two separate groups—fiber textiles and apparel, and leather products.

Senator MATSUNAGA. If we also exclude leather products, would you then favor the bill?

Mr. NEHMER. If you exclude schedules 3 and 7 there would be no basis for our opposition to this legislation. All of these products are included in those two schedules. And I don't think in schedule 7 there is very much other than what we have been talking about.

Senator MATSUNAGA. If we reduce the maximum importable amount to $500 or $750, would you then favor the bill?

Mr. NEHMER. Sir, I would have to say, insofar as these products are concerned there would still be a problem. I think I pointed out in my testimony that the average unit price of a flat goods or personal leather goods imported last year was 75 cents or 76 cents. A lot can come in at $500 or $600 or $750 and not be recorded in the actual statistics. That's the problem.

If you were to exclude textiles, apparel, the leather products that we are talking about, there would be no basis for our even being here today, obviously.

Senator MATSUNAGA. Yes; I understand.

As you know, and as has been pointed out, the $250 limitation was set back in 1953. There has been considerable inflation since then, you must admit. In 1953 were you opposed to the raising of the amount from $100 to $250?

Mr. NEHMER. No, sir. In 1953 I was in the U.S. Government, and I was not involved in this at all.

Senator MATSUNAGA. In the Customs Service.

Mr. NEHMER. No, sir. I was in the State Department, actually, in 1953.

I should point out, Senator, that in 1953 the import impact on these industries was nowhere as it is today. The textile import program didn't begin until 1957, with an agreement negotiated with Japan. There was no import penetration of 65 percent of footwear in 1953. If imports had 2 percent of the U.S. market it would have been a lot in 1953.

What we are talking about is the current situation, Senator, which has deteriorated so badly—as I know you are aware of—that this particular point of $250 versus $1,000 or some intermediate figure becomes a very serious problem to these import-impacted industries.

Senator MATSUNAGA. As you probably know, the Customs Service, including the employees, have approached me to do something about this, because they are overburdened with work with the $250 limitation. They miss the larger imports because they need to pay too much attention to the smaller ones. What do you say to them?

Chairman **Gibbons**. Mr. Pease.

Mr. **Pease**. Thank you, Mr. Chairman.

I don't have any question on the testimony. It seems like a worthy piece of legislation which would certainly assist our efforts to improve international trade. I would like to ask a question, if the chairman would indulge me, which I hope our two noncongressional witnesses will answer.

There was a story in the Washington Post this morning about overloading the air traffic control system. Without extending this hearing more than 60 seconds or so, could you comment from your experience in that area. Are we in trouble with our air traffic control system?

Mr. **Hyman**. I prefer not to comment on that.

Chairman **Gibbons**. OK.

Mr. **Berg**. I simply haven't had any experience with it. I have had no problems.

Mr. **Pease**. Thank you.

Mr. **McKinney**. As the nonprofessional, I would say if one flies the New York corridor, as I am stuck flying two or three times a week sometimes, 55 minutes on the runway at National is something of an overload somewhere. I am not quite sure where.

Mr. **Pease**. Clearly then you are an expert in that particular aspect.

Mr. **McKinney**. I am an expert in Eastern Airlines upholstery.

Mr. **Pease**. Thank you, Mr. Chairman.

Mr. **Frenzel**. Mr. Chairman, I think the fact that this law has stood at $250 since 1953 is astounding. It is even more unbelievable that Lucy McKinney could have stood Stewart for that same period of time.

It sounds to me like a wonderful bill, and I am indebted to Stewart for bringing it to us because usually it is the kind of thing I have to do.

Thank you.

Mr. **McKinney**. Thank you, Mr. Chairman.

As usual, your committee is a delight.

Chairman **Gibbons**. Thank you. We are glad to have you.

We will next take up the testimony from the American Fiber, Textile, Apparel Coalition, and Leather Products Coalition. Mr. Stanley Nehmer, their consultant, come right ahead. We are always happy to see and hear you, Mr. Nehmer.

STATEMENT OF STANLEY NEHMER, CONSULTANT, AMERICAN FIBER, TEXTILE, APPAREL COALITION, AND LEATHER PRODUCTS COALITION

Mr. **Nehmer**. You are very kind, Mr. Chairman. It is always good to see you.

We may have a meeting of the minds on this piece of legislation from what I have heard this morning. Mr. Frenzel and Mr. McKinney, I think I should say that, if the level of imports of textiles and apparel and leather products today were the same as they were in 1953, we probably wouldn't be here.

But we have a much different set of circumstances, and we are aware of the fact that with respect to the low value imports of shirts, or of shoes, or of textiles, that when you raise the informal entry level from $250 to $1,000 or $1,500, you are going to lose a considerable amount of detail in the statistical coverage.

I think where we are at this point in time, Mr. Chairman, is that Mr. McKinney has said that he, if I understood him correctly, accepts section 205 of H.R. 3398 of the Matsunaga bill, and we spent a lot of time over in that body working that out, and that is just fine.

There is only one issue. It is an important issue, I think, that remains here, and that is the question of how the Census Bureau is going to publish the data between $251 and $1,000 for the excepted and excluded products.

Mr. McKinney suggested that there be very clear report language to the effect that the Census Bureau should publish these data in the same way as they publish the entries from $1,000 and over. We have a letter from the Secretary of Commerce on this issue, which I have to say to you we have not been able, with all respect to the Secretary and the Census Bureau, to figure out exactly what it means.

We propose that there be an extra paragraph in this legislation which would require the Census Bureau to include data on the items that are excluded in the regular statistical series without regard to whether such entries are valued between $250 or over $1,000.

We heard this morning from the Commerce Department indicating that there would be separate statistical runs published on these excluded products and they talked about it on a monthly basis. But I am holding in my hand the Bible for people who worry about imports of various products, which is an annual volume, and I didn't hear them say anything about annual.

I wonder if I could make this suggestion, Mr. Chairman, that perhaps your staff in the Trade Subcommittee, the Census Bureau, and we could get together to see exactly what the Census Bureau plans to do, and it may very well be that Mr. McKinney's language is quite adequate.

Chairman GIBBONS. I am so directing him to do that right now.

Mr. NEHMER. If they could act as the mediators, we have had some difficulty getting a meeting, believe it or not, with the Census Bureau, but we would like to get together with them and see exactly what they have in mind.

Chairman GIBBONS. We would be happy to do that.

Mr. NEHMER. Except for that one standpoint, I think we are all on the same wave length as the Senate Finance Committee and Mr. McKinney and hopefully your subcommittee, Mr. Chairman.

Chairman GIBBONS. Thank you very much, sir.

[The prepared statement follows:]

STATEMENT OF STANLEY NEHMER PRESIDENT, ECONOMIC CONSULTING SERVICES INC., ON BEHALF OF AMERICAN FIBER, TEXTILE, APPAREL COALITION, AND THE LEATHER PRODUCTS COALITION

American Fiber, Textile, Apparel Coalition: Amalgamated Clothing & Textile Workers' Union, AFL-CIO; American Apparel Manufacturers Association; American Textile Manufacturers Institute; American Yarn Spinners Association; Carpet and Rug Institute; Clothing Manufacturers Association of U.S.A. Industrial Fabrics Association International; International Ladies' Garment Workers' Union, AFL-

CIO; Knitted Textile Association; Luggage and Leather Goods Manufacturers of America; Man-Made Fiber Producers Association; National Association of Hosiery Manufacturers; National Association of Uniform Manufacturers; National Cotton Council; National Knitwear & Sportswear Association; National Knitwear Manufacturers Association; National Wool Growers Association; Neckwear Association of America; Northern Textile Association; Textile Distributors Association; and Work Glove Manufacturers Association.

Leather Products Coalition: Amalgamated Clothing and Textile Workers Union, AFL-CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics and Novelty Workers' Union AFL-CIO; Luggage and Leather Goods Manufacturers of America, Inc.; United Food and Commercial Workers International Union, AFL-CIO; and Worker Glove Manufacturers Association.

SUMMARY

The American Fiber, Textile, Apparel Coalition (AFTAC) and the Leather Products Coaliton oppose H.R. 4178 in its present form. Instead, we recommend that the bill be amended to conform with Section 205 of H.R 3398 which has been favorably reported by the Senate Finance Committee. Additionally, this legislation should include language which will require the Census Bureau to continue to publish import data for the exempted products under Section 205 (textiles, apparel and leather-related products) in their regular published statistical series.

The reasons why textiles and apparel and leather-related products should be excluded from an increase in the informal entry ceiling from $250 to $1,500 are:

With respect to textiles and apparel, the MFA requires a sophisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. This requires precise customs documentation. There are already an indeterminate amount of apparel imports which do not get charged against negotiated quotas due to informal entry. An increase from $250 to $1,500 in the informal entry ceiling would result in considerably larger number of import shipments which will not be counted against negotiated MFA levels, greatly impairing the operation of the MFA.

Accurate trade data are also needed to set restraint levels on textile and apparel products not currently covered by restraints under the MFA, but which are brought under control as imports increase to the point of causing disruption to the U.S. market.

A major priority for the import-sensitive textile, apparel and leather-related products industries is accurate trade data in order to analyze the economic impact of imports on the domestic market. An increase in the informal entry ceiling for these product shipments would be a detriment to the collection of accurate trade data.

The inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the leval of informal entry is expanded. Aggregate import levels could become increasingly understated if shipments under $1,500 are not included in Census data.

Because many textile/apparel and leather-related items are of low-unit value, large quantities can be shipped under an increased informal entry ceiling, whether it is $1,00 or $1,500.

An increase in the informal entry ceiling would exacerbate the problem of undervaluation and misclassifications by exporters in order to avoid being subject to textile/apparel restraint levels and in the case of leather-related products to avoid payment of proper duty rates.

STATEMENT

This statement is presented on behalf of the 21 members of the American Fiber/Textile/Apparel Coalition (AFTAC) and the 6 member organizations of the Leather Products Coalition. AFTAC and the Leather Products Coalition represent trade associations and labor unions in both the fiber, textile and apparel industries and the leather-related industries.

Both Coalitions oppose H.R. 4178 in its present form.

Before we explain why we are opposed to an increase in the informal entry ceiling for our products (textiles, apparel, footwear, luggage, personal leather goods, handbags, work gloves, and leather apparel), it is first useful to examine how informal entry procedures affect the Government's counting of imports. Goods which are imported under informal entries go unrecorded in the official TSUSA commodity by country statistics maintained by the U.S. Bureau of the Census. These statistics are vital to any industry concerned about imports and the impact of imports on their industry and market. Even under the present ceiling of $250, imports entering under informal entry procedures are not counted in the relevant trade statistics by commodity. No quantity data are provided. Census merely estimates the approximate value of total import shipments of all items valued at $250 or less for inclusion in a single, basket commodity classification by country of origin. This basket category is TSUSA 999.9500 ("under 251 formal and informal entries estimated"); in 1982 the value of U.S. imports in TSUSA 999.9500 was $339.5 million, and the total number of informal entries was 26,713. Any shipments of imported goods valued at under $250, do not get included in the import statistics on that particular commodity but would merely be counted in TSUSA 999.9500. The first attachment to my testimony contains a page from the Bureau of the Census Publication FT 246 which illustrates this point. These data are absolutely useless in determining the articles, their value, or their quantity contained therein.

It is also worth noting that the U.S. Customs Service and the Census Bureau have different criteria for considering a shipment to be an informal entry. Census' definition is the one which ultimately affects whether or not an entry gets counted with the relevant commodity statistics or in the basket category for informal entries. Census' view of informal entries presents a major problem insofar as the textile/apparel and leather-related industries are concerned. The following example is illustrative:

1. Assume that the ceiling for informal entries is $1,500. A shipment of shoes arrives in the United States with a total value of $2,300. This shipment, however, is composed of three different types of shoes falling into three different TSUSA items. One of the TSUSA items (for example, men's leather athletic shoes, TSUSA 700.3515) is valued at $900; one (for example, men's leather work shoes, TSUSA 700.3527) is valued at $700; and one (for example, women's leather athletic shoes, TSUSA 700.4506) is valued at $700.

2. Customs would process this shipment as a formal entry because the total value of the shipment at $2,300 is in excess of $1,500.

3. Census, on the other hand, would consider each of the three items as informal entries because the value of the different TSUSA items is $1,500 or less. Census would not report statistics on each of the entries in the relevant import statistics on shoes. Thus, overall statistics on shoe imports would not contain this $2,300 shipment.

Census has estimated that increasing the informal entry ceiling just to $1,000 would result in a 22 percent reduction in the number of import records processed for total imports. Such a substantial reduction is likely to have significant ramifications in statistical reporting in certain commodities, particularly low-unit value items such as textiles and apparel, and leather-related products.

Because this is the case, textiles, apparel and leather-related products should be excluded from any proposal to increase the informal entry ceiling. For textiles and apparel this is particularly important in order to ensure the effective operation of the Multifiber Arrangement and to prevent further fraud and abuse in U.S. textile import trade.

I

The textile and apparel industry is still the largest employer in manufacturing in the United States although employment in the textile industry in now 1,984,500—about 150,000 below 1980 levels and 350,000 below employment in 1974. Some 750,000 textile and apparel jobs have been permanently lost in this industry because of imports. Last year textile and apparel imports reached a new record level of 7.4 billion square yard equivalents, a 25 percent increase from 1982. Textile/apparel imports over the past three years have increased by 52 percent. During the first four months of this year, alone, there has been a 49 percent increase in textile/apparel imports over the same period in 1983.

The manufacture of apparel is highly labor intensive. Domestic apparel producers find it difficult to compete with foreign producers, especially those in low wage, developing countries. The industry therefore relies upon the Multifiber Arrangement (MFA) to alleviate import pressure on the textile and apparel industries.

The MFA requires a sophisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. The procedure for monitoring imports requires precise customs documentation as to the kinds, quantity, and value of imported articles. Even under current statutes, however, some apparel items from some countries, despite inclusion in the MFA, can be imported into the United States under informal entry procedures if the total value of the shipment does not exceed $250. This results in an already indeterminate number of apparel imports which do not get charged against negotiated quotas due to informal entry.

An increase in the maximum informal entry level would result in a considerably larger number of import shipments which would not be counted against negotiated MFA levels. This would not only hinder the operation of the MFA, but would also injure the industry's ability to monitor its competitive position in the U.S. market.

Accurate trade data are important to set restraint levels on textile and apparel products not presently covered by restraints under the MFA but which are brought under control as imports increase to the point of causing disruption to the U.S. market. When such actions are taken, import levels are set based on imports in the first twelve of the last fourteen months. Import data must fully reflect import levels in order that restraint levels are properly set.

Many imported items affecting the textile and apparel industry have relatively low average unit values. This is becoming an even greater problem today as the People's Republic of China, which has textile and apparel products with particularly low unit values, increases its shipments to the U.S. The inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the level of informal entry is expanded.

If a new ceiling were to be enacted for textiles and apparel there would be increasing incidents of import document irregularities, such as misclassification and undervaluations. These are problems which are already plaguing the domestic textile and apparel industries. Such practices are so rampant that some import specialists estimate that 1 out of every 15 (entries) involves some violation (see attached New York Times article, January 16, 1984).

Also attached to our statement is an article from a Hong Kong publication which describes the action taken by the U.S. Customs Service in Hong Kong when it determined that made-to-measure clothing shipped to the U.S. was being undervalued to avoid being subject to the restraint levels on exports from Hong Kong. The U.S. Customs Service reported that this practice had also resulted in a loss of duty revenue to the U.S. of $300,000 to $500,000 monthly. If the informal entry level is raised, the Hong Kong merchants would have an even greater incentive to cheat.

There are many examples of imported textile and apparel items which are of low unit value and which therefore could take advantage of informal entry procedures. For example, the average unit value of imports of men's and boys' cotton shirts from the PRC in 1982 was $22.89 per dozen, less than $1 each. Thus, 132 of these shirts could enter the United States under the $250 informal entry ceiling. If the ceiling is raised, for example to $1,500, a shipment of 792 shirts can pass through U.S. customs without being logged for statistical purposes. Shipments such as these would go uncounted if a higher ceiling is enacted for textile and apparel items. Unrecorded imports could increase the disruption to the U.S. market without recourse by the U.S. Government.

II

The industries in the leather products sector also rely heavily on accurate trade statistics to monitor market conditions relating to imports and import penetration because the leather-related industries are all highly import-sensitive.

The unemployment rate in the leather products sector rose to 17.8 percent last year. And import penetration for every portion of the leather products sector is at extraordinarily high levels: The latest available data show import penetration for nonrubber footwear at over 70 percent, luggage at 50 percent, personal leather goods at 35 percent, handbags at 85 percent, work gloves at 40–45 percent and leather wearing apparel at 56 percent. As with textiles and apparel, imports of leather-related products need to be monitored closely and only the most precise and timely statistics can be relied upon to keep an accurate watch on import levels. With large numbers of low unit value items constantly being imported into the United States, an increase in the dollar amount of merchandise eligible for informal entry could undermine the efforts of government and industry to monitor accurately what is coming in and where it is coming from.

In 1982, 13.7 percent of all leather-related product entries were valued between $251 and $1,000; an additional 9.5 percent of all leather-related product entries were valued between $1,001 and $2,000. Taken together this includes over 4 percent of the entries of flat goods, 39 percent of the entries of leather apparel, 35 percent of the entries of handbags, 29, percent of the entries of luggage, almost 17 percent of the entries of nonrubber footwear, and over 12 percent of the entries of work gloves. In all, some 38,000 entries of these products in 1982 were valued between $251 and

$1,000 and over 26,000 additional entries of these products were valued between $1,001 and $2,000. (See attached Tables 1 and 2.)

A good example of how many items can come in unlogged under informal entry procedures is the case of nylon flat goods (TSUSA 706.3900). In 1982, the average unit value of U.S. imports of nylon flat goods was 76¢. At the current informal entry ceiling of $250, a shipment of about 330 of these items could go unrecorded in import statistics. Raise the level to $1,500 and some 1,980 number of these flat goods could go uncounted! Shipments of high-volume, low-unit value items could combine to cause substantial undercounting in Census data.

As with textiles and apparel, under-valuation and deliberate misclassification of certain leather-related products in order to evade payment of proper duty rates on these items will likely increase. For example, duties on nonrubber footwear vary from 0 to 20 percent and, on luggage, from 6.5 percent to 20 percent. It will be easy for importers to claim the lower duty rates, particularly since informal entry shipments are not subject to a customs specialist's scrutiny. One can only speculate on how much revenue will be lost to the Federal Treasury if the ceiling on informal entries is increased six-fold as proposed in H.R. 4178.

III

It is precisely because these industries are so import sensitive that they require the most accurate data available on imports. Such data are utilized by our government, by firms and by workers in a number of ways, but most often to portray imports penetration levels accurately with respect to actions taken pursuant to the MFA and in any trade action or complaint filed by a U.S. industry, ranging from GSP matters to section 201 or 301 filings under the Trade Act. Such statistics also play a part in establishing eligibility for industry-wide adjustment programs administered and funded by the Department of Commerce. Such statistics are equally important to the Executive Branch.

IV

We understand that Congressman McKinney, the sponsor of legislation, H.R. 4178, to increase the informal entry ceiling, has agreed to conform his bill to the so-called Matsunaga compromise, which was adopted late last year by the Senate Finance Committee and is now Section 205 of H.R. 3398. We support the language in Section 205, as opposed to the language in H.R. 4178, because all textile, apparel and leather-related products are automatically excepted from the new ceiling under the Senate provision and because Section 205 requires no further administrative determination as to what constitutes a "textile good or product" as would be the case with H.R. 4178. We also recommend the addition of a clarifying amendment to the Matsunaga compromise. The amendment would make clear the Census Bureau's responsibilities to report in its regular published statistical series all import data on formal entries for the exempted products in the Matsunaga compromise without regard to whether such entries are valued at between $251 and $1,000, or over $1,000. As we understand it, this clarification is necessary because officials at Census, in anticipation of favorable Congressional action on Section 205 of H.R. 3398, are making plans to raise from $251 to $1,000 the threshold for entries which Census will publish in its regularly published import statistical series. For the anticipated exempted products, Census intends to tabulate separately entries of $251 and over, and provide such data in supplemental publications or tapes. Such a proposal, if implemented, would prove confusing for these industries which must keep track on a timely basis of literally thousands of separate TSUSA items. With respect to others who use these data for trade cases for other purposes, such an arrangement will also cause enormous confusion. Moreover, we believe that the Census plan runs counter to the intent of the Matsunaga compromise which was adopted by the Senate Finance Committee on the basis that such statistical data should be readily available to these industries because of their problems with imports and because of the special statistical requirements of the Multifiber Arrangement.

If the Committee decides to move forward with a revised version of the bill H.R. 4178, we hope it will pattern its changes after the Matsunaga compromise (Section 205 of H.R. 3398) and include language along the lines of the attached draft revision of Section 205. The language we suggest is italicized and reads:

"All data on formal entries for the items referred to in subsection (a)(2) shall be published by the Census Bureau in all of their regular statistical series for General Imports and Imports for Consumption, by TSUSA item, without regard to whether such entries are valued at between $251-$1,000, or over $1,000."

INCREASE IN AMOUNT FOR INFORMAL ENTRY OF GOODS

Sec. 205. (a) Paragraph (1) of section 498 of the Tariff Act of 1930 (19 U.S.C. 1498) is amended—

(1) by striking out "$250" and inserting in lieu thereof "$1,000"; and

(2) by inserting before the semicolon at the end thereof: ", except that this paragraph does not apply to articles valued in excess of $250 classified in—

"(A) schedule 3,

"(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

"(C) parts 2 and 3 of the Appendix, of the Tariff Schedules of the United States, or to any other article for which formal entry is required without regard to value".

(b) *All data on formal entries for the items referred to in subsection (a)(2) shall be published by the Census Bureau in all of their regular statistical series for General Imports and Imports for Consumption, by TSUSA item, without regard to whether such entries are valued at between $251-$1,000, or over $1,000.*

(c) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of the enactment of this Act.

Table 1. TSUSA Commodity by Country of Origin

(See Explanation of Statistics for information on coverage, compiling procedures, sources of error in the data, the symbols OTH CTY, UNIDTY and definitions of import valuations and charges. Numeric codes preceding country descriptions represent the following: 1—country of shipment, country of origin unknown; 2—items imported under Tariff Provision 807.00; 3—items imported under Tariff Provision 806.30; and 4—items imported under the Generalized System of Preferences Provisions of the Trade Act of 1974; 5—Certified Hand-Loomed and Folklore Products; 6—Foreign Trade Zone Privileged status; and 8—Foreign Trade Zone Non-Privileged status).

Country of origin	Net quantity	Value (1,000 dollars) Customs	Value (1,000 dollars) Customs	Value (1,000 dollars) C.I.F.	Value (1,000 dollars) Charges
APPENDIX TO THE TARIFF SCHEDULES					
SCHEDULE 9 TOTAL		389 837	389 837	401 690	8 102
[illegible] COPPER ARTICLES FOR REMANUFACTURE					
CANADA	581 020	270	270	270	-
TOTAL	581 020	270	270	270	-
[illegible] RELAYING OR REROLLING RAILS FOR REMANUFACTURE					LB
CANADA	69 353 082	2 104	2 104	2 104	
TOTAL	69 353 082	2 104	2 104	2 104	
[illegible] METAL ARTICLES, NSPF, FOR REMANUFACTURE					LB
CANADA	2 165 546	422	422	422	-
FRANCE	34 589	240	240	247	7
ITALY	59 753	101	101	102	1
OTH CTY	43 336	11	11	11	(Z)
TOTAL	2 303 225	774	774	783	8
[illegible] MUSHROOMS, FROZEN, ARBITRARY NUMBER, ALSO SEE 144.2005					LB
CANADA	261 873	279	279	280	1
CHINA T	251 008	197	197	220	23
OTH CTY	498	2	2	4	1
TOTAL	513 379	478	478	504	26
[illegible] STRAW MUSHROOMS, PREP, PRES, EXCEPT FROZEN, ARBITRARY NUMBER					LB
CHINA T	717 524	607	607	666	59
OTH CTY	4 500	5	5	5	(Z)
TOTAL	722 024	612	612	671	59
[illegible] MUSHROOMS, WHOLE, PREP, PRES NT FRZN, NT OV 9OZS, ARBITRARY					LB
CHINA M	308 227	406	406	444	38
KOR REP	194 300	277	277	297	20
HG KONG	151 194	148	148	163	14
CHINA T	1 581 952	2 130	2 130	2 309	179
2 CHINA T	140 065	198	198	218	19
OTH CTY	53 875	77	77	84	7
TOTAL	2 380 602	3 236	3 236	3 514	278
[illegible] MUSHROOMS, SLICED, PREP,PRES EXC FZ, NT OVER 9OZ, ARBITRARY					LB
CHINA M	329 204	348	348	386	38
KOR REP	288 709	403	403	435	32
CHINA T	3 283 334	4 655	4 655	5 028	374
2 CHINA T	861 194	1 292	1 292	1 418	126
OTH CTY	107 211	140	140	154	14
TOTAL	4 870 652	6 839	6 839	7 421	583
[illegible] MUSHROOMS, PREP, PRES EXCEPT FZ, NSPF NT OV 9OZ, ARBITRARY					LB
CHINA M	4 377 522	4 055	4 055	4 503	448
KOR REP	224 490	256	256	278	22
HG KONG	463 636	379	379	422	44
CHINA T	3 329 137	3 452	3 452	3 775	323
OTH CTY	66 379	80	80	89	9
TOTAL	8 461 163	8 221	8 221	9 066	846
[illegible] MUSHROOMS, WHOLE, PREP, PRES, NOT FRZN, OV 9 OZ., ARBITRARY					LB
FRANCE	31 485	69	69	74	5
CHINA M	212 350	174	174	190	16
HG KONG	204 247	170	170	185	14
CHINA T	1 656 462	1 860	1 860	2 015	156
OTH CTY	124 770	140	140	150	11
TOTAL	2 229 311	2 412	2 412	2 623	202
[illegible] MUSHROOMS SLICED PREP, PRES, EXC FRZN, OV 9 OZ., ARBITRARY					LB
MACAO	239 538	182	182	200	19
CHINA M	867 190	663	663	734	71
HG KONG	1 050 526	918	918	1 006	88
CHINA T	730 419	782	782	847	65
OTH CTY	2 810	5	5	6	1
TOTAL	2 890 482	2 551	2 551	2 793	243
[illegible] MUSHROOMS, PREP, PRES EXCEPT FRZN, NSPF, OV 9OZ, ARBITRARY					LB
CANADA	74 159	74	74	74	-
MACAO	1 542 343	1 144	1 144	1 273	129
CHINA M	11 857 163	8 500	8 500	9 440	940
KOR REP	1 430 704	1 112	1 112	1 231	119
HG KONG	5 700 088	4 144	4 144	4 577	433
CHINA T	8 280 620	6 692	6 692	7 376	684
JAPAN	72 210	64	64	70	6
OTH CTY	57 880	75	75	81	5
TOTAL	29 035 062	21 806	21 806	24 130	2 324
[illegible] EQUIPMENT AND REPAIRS OF VESSELS					
CANADA	-	2 041	2 041	2 041	-
MEXICO	-	102	102	102	-
PANAMA	-	791	791	791	(Z)
ECUADOR	-	73	73	73	-
BRAZIL	-	368	368	368	-
NETHLDS	-	933	933	933	-
FR GERM	-	187	187	187	-
PORTUGL	-	91	91	91	-
GREECE	-	94	94	94	
SINGAPR	-	135	135	135	-
KOR REP	-	167	167	167	(Z)
HG KONG	-	132	132	132	(Z)
JAPAN	-	728	728	729	1
EGYPT	-	194	194	194	-
REP S AF	-	113	113	113	-
OTH CTY	-	436	436	436	(Z)
TOTAL	-	6 587	6 587	6 588	1
[illegible] UNDER 251 FORMAL AND INFORMAL ENTRIES ESTIMATED					
CANADA	6 425	53 699	53 699	53 936	237
MEXICO	1 650	97 164	97 164	97 631	467
GUATMAL	22	411	411	412	2
SALVADR	20	298	298	300	1
HONDURA	30	100	100	101	1
NICARAG	8	64	64	64	(Z)
C RICA	20	283	283	284	2
PANAMA	10	72	72	72	(Z)
BERMUDA	14	159	159	160	1
BAHAMAS	9	90	90	91	(Z)
JAMAICA	12	176	176	177	1
HAITI	93	518	518	520	2
DOM REP	158	1 743	1 743	1 750	7
N ANTIL	36	296	296	298	2
F W IND	10	226	226	227	1
COLOMB	38	642	642	644	2
VENEZ	60	620	620	624	3
GUYANA	8	160	160	161	1
ECUADOR	18	123	123	123	(Z)
PERU	18	189	189	189	1
CHILE	4	69	69	70	(Z)
BRAZIL	62	462	462	464	2
URUGUAY	2	108	108	108	(Z)
ARGENT	18	230	230	231	1
ICELAND	305	515	515	517	3
SWEDEN	144	2 315	2 315	2 323	8
NORWAY	51	738	738	742	4
FINLAND	36	353	353	354	1
DENMARK	258	3 134	3 134	3 150	16
U KING	1 812	21 178	21 178	21 279	101
IRELAND	436	7 030	7 030	7 063	33
NETHLDS	162	2 238	2 238	2 248	10
BELGIUM	155	1 302	1 302	1 308	6
FRANCE	429	6 910	6 910	6 937	27
FR GERM	1 567	22 348	22 348	22 450	102
GERM DR	37	611	611	614	4
AUSTRIA	32	395	395	396	1
CZECH	1	71	71	71	(Z)
SWITZLD	338	4 595	4 595	4 617	22
POLAND	11	209	209	210	1
SPAIN	166	1 565	1 565	1 573	8
PORTUGL	54	609	609	612	3
ITALY	868	8 352	8 352	8 388	37
YUGOSLV	3	68	68	69	(Z)
GREECE	32	450	450	453	2
ROMANIA	16	151	151	151	1
SYRIA	8	199	199	200	1
IRAN	29	162	162	163	1
ISRAEL	19	243	243	244	1
S ARAB	55	456	456	458	2
INDIA	186	2 509	2 509	2 519	10
NEPAL	11	117	117	118	1
SRI LKA	32	123	123	123	1
THAILND	146	1 692	1 692	1 701	9
MALAYSA	12	177	177	177	(Z)
SINGAPR	143	1 545	1 545	1 553	8
INDNSIA	12	154	154	155	1
PHIL R	170	1 597	1 597	1 603	6
CHINA M	77	1 933	1 933	1 941	8
KOR REP	681	5 626	5 626	5 656	30
HG KONG	3 063	32 639	32 639	32 809	170
CHINA T	1 150	10 793	10 793	10 842	49
JAPAN	2 650	29 311	29 311	29 441	129
AUSTRAL	187	1 683	1 683	1 691	8
N ZEAL	84	1 228	1 228	1 234	6
T PAC I	16	235	235	236	1
REP S AF	62	588	588	591	3
UNIDCTY	256	2 478	2 478	2 492	14
OTH CTY	84	822	822	826	3
TOTAL	26 713	339 940	339 940	341 538	1 598

Source: U.S. Imports For Consumption And General Imports, TSUSA Commodity by Country of Origin, U.S. Department of Commerce, Bureau of the Census, FT246/Annual 1982.

[From the New York Times, Jan. 16, 1984]

Customs Service Gives Textiles a Twice-Over

(By Seth Mydans)

In the world of smuggling these days, fashion is the fashion.

Recent trophies among customs in spectors include 100,000 counterfeit Lacoste alligator emblems, 759 cartons of fake Jordache jeans and $17 million worth of Taiwanese shorts-and-shirt sets slipping into the country under quotas for swimwear.

"These are multimillion-dollar shipments," Edward Kellmer, a United States Customs agent, said. "Its better than smuggling diamonds."

With the increasingly complicated import regulations that have been put in force in recent years to protect American textiles and other industries, counterfeiting and customs fraud have become big business, reaching as high as $16 billion a year, according to the Customs Service.

The alligator emblems, jeans and shorts sets are all trophies of the agents' work, but they are also indicators of the amount of counterfeit goods that continue to enter the country undetected.

TEXTILE-FRAUD TASK FORCE

To try to tighten enforcement of import regulations, the Customs Service created a New York task force in October to coordinate detection of textile fraud. Patrick T. O'Brien, assistant regional commissioner for enforcement, said the task force had already seized textile products worth $3.1 million.

The task force, part of an antifraud program called Operation Tripwire, is composed of a dozen specialists who coordinate the detection forces at Kennedy International Airport and the ports of New York and New Jersey.

Their methods range from close analysis of import documents to laboratory analysis of textiles to tracing tips from employees of import concerns.

In their work, the agents develop a wary respect for adversaries who have become as expert in the shifting minutiae of textile-import laws as they are.

"I think there's a mutual admiration society," said Frank J. Carroll, the Customs Service's New York regional program manager for fraud investigations. "I think if something is particularly well hidden, there's a certain respect."

MOST SOPHISTICATED SMUGGLER

"This is probably the most sophisticated smuggler there is," said Mr. Kellmer. "They're college educated. They're world travelers. They're pillars of their community. And when they're nailed, they're shocked."

The first line of defense against the textile smugglers is where it has always been for the Customs Service, at the dockside.

The dockside itself has changed, though. And as Supervisory Inspector Lynn Pelletier clambered into back of the large metal shipping container with a flashlight on a recent inspection, only the faint smell of curry from a stack of sealed crates served as a reminder that the spices and silks of the world still pass through the ports of New York City.

Around her at Port Newark, which has replaced Manhattan and Brooklyn as New York City's main seaport, were acres of identical containers that gave no hint of their contents.

"You look across there and you just wonder," said Mr. Carroll as he looked on. He said an inspector, whether working the conveyor belts at Kennedy Airport or the containers at Newark, continually asked himself, "Should I have looked farther?"

Of the containers chosen for scrutiny by import specialists who study their documentation, he said, 1 in 15 involves some violation. "It's nice to see your suspicions confirmed," he said.

This time Miss Pelletier was quite sure she was on to something. The container she was inspecting was one of three from China containing clothing. The documents described the clothing as just under 50 percent cotton and just over 50 percent, or chief-weight, ramie, a hemp fiber.

Miss Pelletier knew that China had already filled its 1983 quota for cotton exports to the United States, and that it was uncommon for clothing to be chief-weight ramie rather than chief-weight cotton.

She also knew that the three containers, worth $400,000, could bring $1.25 million on the American market if she let them through.

Miss Pelletier pulled out several pairs of fashionably pleated gray shorts with a subtle purple stripe and sent them to the Customs Service's laboratory in the World Trade Center for analysis.

DYES AND MICROSCOPES

In the laboratory, Martin Youngberg, a textile chemist, had the shorts dyed to heighten the differences in the fibers and examined under a polarized-light microscope.

If necessary, the laboratory could have run the shorts through other tests, peering at them in an ultraviolet light box or slicing them into small pieces that could be ground into dust and poured into a chemical solution.

The microscopic examination was enough to show the shorts were, as Miss Pelletier had suspected, chief weight cotton, and the case of the gray-and-purple Chinese shorts was sent to investigators to determine whether criminal charges could be brought. The shipment was seized by the Customs Service, and a penalty will be assessed on the importer.

The textile quotas, which have grown increasingly complex in recent years as the United States has sought to protect its industry from inexpensive imports, have created a whole new area of expertise both for customs agents and smugglers.

Following the quota allotments from month to month, for example, importers may shift their shorts sets from the children's wear category to the more readily available, but inapplicable, swimwear category.

Or they may ship cotton garments from China, where the quota is filled, through Jakarta, where "Made in Indonesia" labels are sewn on.

They may attach cheap fur collars to down-filled coats and try to bring them in under the fur-import quota.

Or they may simply counterfeit name-brand goods like Lacoste or Jordache, cutting corners on quality but imitating them so skillfully that even the manufacturer can hardly tell the difference.

"The profits are phenomenal and justify the risk," Mr. Kellmer said. "Some designer jeans when they hit the dock are worth $8 and in the stores they sell for $60."

At the Newark investigating offices of the Customs Service, copies of a cartoon are tacked up on walls throughout the building. It shows two convicts talking in a jail cell. "Twenty-dollar bills don't pay," says one. "What I counterfeited was where the big money is: jeans."

CUSTOMS CRACKDOWN

An investigation by the US Customs, which in January-April seized some 8,000 parcels of custom-made clothing despatched from Hong Kong, has led to the imposition of stringent new conditions on such sales. A directive dated April 30 and signed by Mr. Donald Mieger, senior US Customs representative in Hong Kong, specifies that:

All future shipments must be declared at full transaction value, i.e. the price to the US customer.

They must contain a copy of the original invoice or order form, and proof of payment.

All books and records concerning sales to the US must be available for inspection on demand.

All parcels must be properly declared as regards fibre content, and contain proper quota and visa documentation.

Urging tailors, shippers and mail order companies to use their "influence" to ensure the widest possible conformity with these guidelines, the directive states that firms which fail to follow them "and which continue to falsify values and provide inaccurate information regarding fabric content will have their parcels seized, and may face criminal action by US Customs. Action will also be taken against firms that refuse to pay the assessed benefits."

Mr. Tom Gray, a US Customs official who has been leading the investigation in Hong Kong, say that at a conservative estimate 85% of the parcels of made-to-measure clothing shipped from Hong Kong had been undervalued, so as to save duty or evade quota requirements. Goods valued at US$250 and over are subject to quotas.

According to Mr. Gray, the present widespread abuse derives from a new policy introduced in July 1980, by which goods are assessed for duty on transaction value—the price paid—as against the former assessment based, on "constructed value," which covered the tailor's material costs plus wholesale profit of about 20%.

But as made-to-measure goods are marked up by 60–80%, many people had continued to value under the old system.

False description might also be used in an attempt to evade duty. E.g. all-cotton shirts attract an 8-16% duty, as against 27% for shirts of cotton-synthetic blends. Articles bearing logos pay up to 40%.

The degree of abuse came to light after complaints were made against one company in America. The present loss of duty revenue was estimated at US$300,000-500,000 monthly. About 50% of the volume of the present trade was generated by mail-order firms, with the rest stemming from various retail outlets.

The directive adds that if the guidelines are "accepted and followed" parcels valued at under $250 now being held by US Customs at Seattle and San Francisco, the two main points of entry, will be released immediately, with duty assessed at true value. Those valued over $250 will be assessed at a rate of eight times the potential loss of revenue, levied against each parcel individually and with the "tailor and consignee identified." For these however the US Commerce Department will request "blanket quota wavers."

"We do not," says the directive, contemplate petitions or mitigations of these penalties as a general rule. Violators are expected to pay in full."

TABLE 1.—INFORMAL ENTRIES OF LEATHER-RELATED PRODUCTS VALUED BETWEEN $251 to $1,000, AND BETWEEN $1,001 to $2,000

	Total number of entries	Percent of entries valued between	
		$251 to $1,000	$1,001 to $2,000
Nonrubber footwear	177, 753	9.2	7.5
Handbags	37,183	22.0	13.1
Luggage	26,526	18.0	10.7
Flat goods	14, 849	26.8	17.4
Leather apparel	17,994	25.4	13.4
Work gloves	3,308	5.4	6.9
Total	277,613	13.7	9.5

Source: Prepared by Economic Consulting Services, Inc., from data compiled by the U.S. Census Bureau.

TABLE 2.—SUMMARY OF STATISTICAL INFORMATION RELATING TO INFORMAL ENTRY

	Total imports (1982)			$251 to $1,000			$1001 to $2,000	
	Count	Quantity (thousands)	Value (thousands)	Count	Quantity (thousands)	Value (thousands)	Count	Quantity (thousands)
Nonrubber footwear	177,753	481,063	3,087,342	16,297	1,923	9,179	13,391	4,667
Handbags	37,183	192,129	418,298	8,169	2,270	4,581	4,867	3,328
Luggage	26,526	(1)	336,136	4,765	(1)	2,639	2,831	(1)
Flat goods	14,849	(1)	94,262	3,982	(1)	2,251	2,588	(1)
Leather apparel	17,994	6,699	251,862	4,570	60	2,524	2,403	85
Work gloves[2]	3,308	4,695	48,430	179	12	104	229	37
Total	277,613	(1)	4,236,330	37,962	(1)	21,278	26,309	(1)

[1] Not available, or not applicable.

[2] Includes leather and plastic or rubber work gloves.

Source: Prepared by Economic Consulting Services, Inc., from data compiled by the U.S. Census Bureau.

Mr. **FRENZEL**. Don't go away. Mr. Nehmer, are you talking about section 205 (a), (b), and (c) in the Senate bill and 3398?

Mr. **NEHMER**. Yes, sir; those would be the excluded products from this legislation.

Mr. **FRENZEL**. I wonder if you could comment with respect to the figure of $1,000 and $1,500.

Mr. **Nehmer**. Well, of course, the Senate version of the bill is $1,000. Mr. McKinney's bill is $1,500. I heard him say this morning he would like to settle at $1,250. Very frankly, if these products are excluded, I don't think we have a position on that question.

Mr. **Frenzel**. Thank you very much.

Chairman **Gibbons**. All right, thank you Mr. Nehmer.

Mr. **Nehmer**. Thank you, Mr. Chairman.

Chairman **Gibbons**. We have Mr. Frenzel and Ms. Mikulski's bill, H.R. 5418, and we have the National Customs Brokers & Forwarders Association of America, Inc., Mr. St. John and Mr. Isaacs, and the J.F.K. Airport Customs Brokers Association.

I wonder if they would all come forward. Do we have one spokesman? We have two associations here. Let's have one spokesman for each association, and then if that spokesman will introduce the people that are with him.

First we take the National Customs Brokers & Forwarders Association. Mr. St. John, I believe, we will hear first.

Mr. **St. John**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Introduce anyone you may have with you.

STATEMENT OF WILLIAM J. ST. JOHN, JR., PRESIDENT, W.R. ZANES & CO., AND PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. **St. John**. I appear here today as president of the National Customs Brokers & Forwarders Association of America, a nationwide organization of licensed customs brokers and freight forwarders which includes 29 affiliated regional associations.

I am accompanied by Harvey A. Isaacs, Esq., of Thompson & Davidson, customs counsel to our association; Mr. John Kent, Esq., of McKenna Conner, our Washington representative, and Mr. Sigmund Shapiro of Baltimore. Mr. Shapiro is a member of our board and a member of our legislative committee.

Chairman **Gibbons**. All right, go right ahead.

Mr. **St. John**. I am most pleased with this opportunity to express our support of H.R. 5418 introduced by Representatives Frenzel and Mikulski and perhaps optimistically entitled the Customs Brokers Act of 1984.

The bill is a result of lengthy negotiations with Customs and represents a compromise to which both sides are in agreement except in a few isolated, nonsubstantive areas.

I should like to briefly summarize the major purposes of the bill and the results which we hope it will achieve.

Chairman **Gibbons**. All right.

Mr. **St. John**. Of course, after we complete, we will be happy to answer any questions. We have filed a more detailed written statement regarding the bill for the record.

At this point, Mr. Chairman, I would like to also submit for the record the endorsement of the bill of some 27 regional associations of the 29 that we represent.

Chairman **Gibbons**. Fine, thank you. We will include all of that in the record.

Mr. **St. John**. H.R. 5418 is no sudden development. There is a history of many years of dialog with various administrations and years of study and debate within the association itself and the Customs Service as to how section 641 of the Tariff Act should be modernized to conform to present-day practices within the brokerage community and to current attitudes and philosophies regarding the regulating of licensed brokers.

After many years of discussion, even predating the decision of section 641 transmitted to the Congress on May 7, 1975, as title III of H.R. 9220 has given our association the opportunity to reach agreement with Government officials who have studied our problems and the issues of mutual concern. I believe that today's hearing will substantiate our common interests in passing this bill in substantially the form now before you.

The definition of customs business is particularly important to us for this reason. The customs brokers are licensed professionals who represent others in the conduct of customs transactions and must stand accountable to the Government in this area. Many areas of a broker's business are unrelated to the customs transactions, such as arranging inland trucking to the client's place of business or warehouse or charges for physical manipulation of the merchandise such as reparking.

We strongly support section 641 revisions set forth in the bill which defines customs business in a manner which would exclude these services from the scope of Government audit and regulation and would allow us to compete fairly with unlicensed parties offering such similar service.

A further benefit accruing from such a definition is the avoidance of Customs duplication of regulatory activities which are the primary responsibility of other agencies, such as matters involving freight charges for inland shipping or compliance with Food and Drug Administration requirements.

Next, although H.R. 5418 retains the long-established distinctions between an individual broker's license and those licenses granted to corporations, partnerships or associations which are grounded upon prior issuance of individual licenses we see no legal or practical reason to retain the present requirements that at least two members of the licensed corporation or partnership must hold licenses.

This has been, for the most part, circumvented by the practice of "renting" licenses by individual licenseholders having no beneficial interest in the renting firm. Accordingly, the bill provides that corporations, partnerships, et cetera, may be licensed if at least one officer or partnership member holds individual licenses.

The concept of a customs broker permit covered in the bill is a new one. The present system is basically derived from the days when the customs brokerage business was much more fragmented and largely operated by smaller brokers, each doing business with individual ports and districts.

Under the current system a brokerage firm must be granted a separate license to do business in each individual district in which it maintains an office.

The evolution of the industry has led to situations where the larger brokers hold individual licenses in many separate customs districts. To replace this outdated system, H.R. 5418 proposes that the license be recognizesd as nationwide. However, any licensed customs broker must, in addition, obtain a permit to conduct customs brokerage within a particular customs district and to obtain and hold such a permit it must employ at least one individually licensed broker to exercise responsible supervision and control over the customs business conducted in that district.

This requirement should restore the benefits of the earlier industry structure where brokerage concerns primarily consisted of licensees personally supervising their small district firms.

We have been assured by Customs that the licensees will immediately receive a permit on application when the broker can display having an individual licensed broker employed in a particular district to supervise the customs business and an office within that district.

H.R. 5418 also contains two new provisions pertaining to the imposition of monetary civil penalties by the Secretary of the Treasury. The first of these allows Treasury to assess a penalty not to exceed $10,000 for each transaction where an unlicensed person or firm intentionally engages in transaction of customs brokerage services on behalf of others.

We have found that both individual and corporations will, on occasion, obtain business by offering customs clearance services for which they hold no license. Our experience in the past has been that Customs is reluctant to pursue complaints which our association or individual members may file, apparently because no clear-cut enforcement tool is at Custom's disposal. Therefore, this provision is intended to remedy this shortcoming in the law.

The second provision allows Treasury to impose civil penalties against license brokers who are in violation of the provisions of section 641 and the implementing regulations. It is, of course, somewhat unusual for a trade association to appear before the Congress and urge that a provision allowing for imposition of civil penalties against members be placed in the hands of Government regulators.

The problem is that under the present law, after the Secretary of the Treasury determines that a broker is in violation of section 641 or the customs regulations, he is limited to revocation of the broker's license in extreme cases or to suspension of the broker's license in less extreme cases.

Our experience has been that even a short suspension of, say, a matter of days jeopardizes the broker business and can effectively terminate the broker's operation.

Therefore, H.R. 5418 proposes to grant Treasury this much needed additional flexibility and allow imposition of the monetary penalty as a substitute, deterrent or punishment, but one which would allow offending brokers to continue in business.

We have been assured by the Customs Service that regulations will be issued prior to the effective date of this provision setting forth guidelines as to the amount of the penalty which should be initially assessed depending on the seriousness of the infraction and the degree of culpability of the broker. It is certainly not intended that every claim for penalty under these provisions by Customs will initially be made for the maximum amount set forth in the statute.

Similarly, the bill allows the Secretary of the Treasury to impose monetary penalties even if the disciplinary proceedings have commenced as suspension or revocation proceedings.

Finally, I want to comment on one aspect of the bill which we believe is particularly important. I speak of the provision requiring that in any proceeding to revoke or suspend a broker's license or permit, the hearing officer must be an administrative law judge who is empowered to make recommendations to the Secretary following a trial type hearing.

We feel strongly that the requirement of the administrative law judge conduct the hearings is fundamental to insure due process to the broker. The very nature of the proceedings clearly requires that the hearing officer be an independent judge of the facts, one who is outside the Customs hierarchy and not beholden to his superiors in the Customs Service or the Treasury Department.

I submit that any additional costs under this provision are extremely low when compared to Customs' annual budget and the benefits to be derived in terms of the administrative justice and fairness.

The bill also contains conforming amendments to title 28, United States Code, governing judicial review by the Court of International Trade of administrative actions imposed against brokers. Our written statement addresses these and other sections of H.R. 5418 in detail.

That concludes my statement, Mr. Chairman. On behalf of our association, I wish to thank you for the opportunity to appear before the subcommittee and, of course, we will be ready to answer questions you may have.

[The prepared statement follows:]

STATEMENT OF WILLIAM J. ST. JOHN, PRESIDENT, W.R. ZANES & CO., AND PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

SUMMARY

H.R. 5418 will accomplish these necessary goals:

(1) Section 641 of the Tariff Act of 1930 requires modernization and revision to conform to the changes in the customs brokerage industry which have occurred in recent years.

(2) Customs brokers should receive one nationwide license. However, customs brokers doing business within a particular customs district, or within several customs districts, should be issued a district permit conditioned upon each district office being under the responsible supervision and control of an individually licensed customs broker.

(3) The Secretary of the Treasury should be granted additional flexibility (not existing under current law) to impose sanctions upon licensed brokers not in compliance with the law or regulations, by means of civil penalties as an alternative to revocation or suspension of the brokerage license or permit.

(4) Proceedings for suspension or revocation of a license or permit should be via trial-type hearing before an Administrative Law Judge empowered to make recommendations to the Secretary.

(5) The Customs Service should regulate only those activities of customs brokers involving transactions with the customs service. So-called "ancillary services", involving activities other than customs transactions either should be unregulated or should be subject to the exclusive jurisdiction of other federal agencies having primary responsibility.

(6) The procedures for judicial review by the Court of International Trade of administrative sanctions imposed against customs brokers and others should be revised to conform with the changes to Section 641 summarized above.

STATEMENT

Introduction

The bill amends § 641 of the Tariff Act of 1930, as amended (19 US.C. 1641) to modernize the procedures for the licensing and regulation of customhouse brokers. The existing statute contains the basic licensing and regulatory scheme developed in the Act of June 10, 1910, 36 Stat. 464. With the exception of the addition or provisions to regulate the licensing of partnerships, corporations and associations, the law relating to customhouse brokers has been almost unchanged. Since then, the customhouse brokerage business has changed considerably. From small one-person businesses operating exclusively at the customhouse, the typical modern-day customs brokerage firm has become a corporation employing many people who deal with Customs at locations such as piers, container stations, warehouses, airports, and truck terminals, and which may offer a wide variety of services in addition to Customs clearance. The firms frequently operate in many different customs districts. Those laws which were adequate over 70 years ago must be revised to meet the new needs of the public and of the Customs Service.

A comprehensive revision of § 641 was transmitted to Congress on May 7, 1975, as Title III of H.R. 9220. However, during hearings held in August 1976, by the Subcommittee on Trade of the House Committee on Ways and Means, it was found that the customs brokerage industry, while supporting the overall thrust of the bill, was critical of many of the provisions of Title III. These many critical comments convinced the Customs Service that further study and consideration of the proposals were required. As a result, a Customs task force was created which solicited the opinions of key customs personnel nationwide and customs brokers' and importers' associations. Utimately, the government and the National Customs Brokers & Forwarders Association of America developed new draft bills. The proposals in this bill are an amalgamation of these drafts, and reflect the product of extensive discussions between the Customs Service and the Association.

ANALYSIS OF PROVISIONS

Section 1 sets forth the short title, the "Customs Brokers Act of 1984". The proposed bill substitutes the term "customs broker" for the term "customhouse broker" wherever it appears in § 641 and in related provisions of Title 28, United States Code. This new phraseology reflects the changing character of the industry; brokers no longer conduct business exclusively from offices at customhouses, but now deal with Customs wherever imported cargo is handled.

Section 2 contains the primary features of the bill, extensively amending § 641 in the following particulars (unless otherwise indicated, all references are to § 641 as amended by the bill):

Section 641(a)(1) defines the term "customs broker" to mean any person granted a customs broker's license by the Secretary of the Treasury.

Section 641(a)(2) is a new provision which defines the term "customs business", as used throughout § 641, to mean those activities of a customs broker involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes or charges assessed or collected by Customs upon merchandise by reason of its importation, or the refund, rebate or drawback thereof. This limitation is necessary to resolve ongoing disagreements between brokers and the Customs Service regarding Customs' authority to investigate, audit, and regulate customs brokers in areas unrelated to customs transactions, such as arranging inland trucking from the seaport to the client's place of business, or charges for services such as cooperage. In such non-customs areas, the customs broker competes with unlicensed parties performing the same service and has been handicapped to a degree by such Customs supervision (especially by government auditors) in his performance of these transactions. The essence of a customs broker's license is transaction of business with customs officials; it is these activities which should properly be regulated by the Customs Service, and the amended provision reflects this philosophy.

Section 641(a)(3) defines the term "Secretary" to mean the Secretary of the Treasury.

Section 641(b)(1) restates present law in that it provides that any person who conducts customs business as a customs broker must hold a valid license; however, no person is required to hold a license for the purpose of conducting customs business solely on his own behalf.

Section 641(b)(2) is a restatement of present law, authorizing the Secretary to issue individual licenses as customs brokers to citizens of the United States. The Secretary is to determine, as under present law, that the applicant is "of good moral character" and he may require such other facts to be shown as he may deem advisable regarding the applicant's qualification to render valuable services to others in the conduct of customs business. The third sentence codifies Customs' present administrative practice of conducting a written examination to determine an applicant's knowledge of customs and related laws, regulations and procedures; and it also allows Customs to test an applicant's knowledge of bookkeeping, accounting, and all other matters appropriate to the management of a brokerage concern.

Section 641(b)(3) authorizes the Secretary to grant a customs broker's license to any corporation, association or partnership formed under state law if at least one officer of the corporation or association, or one member of the partnership holds a valid license as an individual customs broker. This reflects a change from present law, which requires that at least two officers of the corporation or association, or two partnership members, hold individual licenses. The two-licensee requirement has proved unnecessary and has led to the practice to "renting out" individual licenses, by licensees who have no beneficial interest in the firm utilizing that license.

Section 641(b)(4) requires a customs broker to exercise responsible supervision and control over the customs business it transacts. This codifies the present administrative requirement contained in 19 CFR 111.28(a).

Section 641(b)(5) essentially restates present law which provides that a corporation, association or partnership license shall be deemed revoked (by operation of the law) for failure to observe the present two-individual-licensee requirements. The new provision reflects the one-individual-licensee rule, and extends the necessary default period to 120 continuous days. Additionally the new provision subjects the offending broker to the new provisions for assessment of monetary penalties for unlicensed customs brokerage practice as discussed below.

Section 641(b)(6) is a new provision which allows the Customs Service to assess penalties, not to exceed $10,000 for each transaction, against an unlicensed person who intentionally transacts customs business other than on his own behalf, and which may be assessed in addition to other monetary penalties for violations of other provisions of §641. Under present law, it is unclear to what extent and under what law the government may impose sanctions against such unlicensed operations; hence, the necessity for the new provision.

Section 641(c)(1)(A) introduces a new element into the law, namely, the concept of a broker's permit. This provision requires that each licensed customs broker, whether an individual, corporation, association or partnership, shall be issued a permit for each customs district in which that broker transacts customs business. Under the present system, licenses are issued on a district-by-district basis, a holdover from former days when Customs brokerage business was much more fragmented and for the most part operated by smaller brokers, each of whom did business within individual ports or districts. However, the industry has evolved along more centralized and consolidated business lines, and it is common for the larger brokers to operate offices within many districts. Recognizing this change in the industry, under the amendment all licensees would hold a nationwide license to transact customs brokerage business, but shall be issued a permit to do business within a particular district. To avoid misunderstandings concerning how much a broker has to do in contemplation of receiving a permit (hiring personnel, renting space, etc.), it is understood that the implementing regulations will contain provisions for conditional permit approval provided that full compliance is achieved within a specified time. It is also understood that the issuance of a permit to a qualifying broker is a ministerial act requiring no further investigation, etc. of the applicant once the District Director is notified that the formalities have been met.

Section 641(c)(1)(B) is based upon the aforementioned present requirements of the Customs Regulations, that a brokerage firm which operates in several locations (including several districts) be required to "exercise responsible supervision and control" over its customs business. The present requirement is that such responsible supervision and control may be exercised by an unlicensed employee, so long as he receives regular guidance and visits from a licensee-principal of the firm. However, the public will be better served, and the profession greatly improved if, in the case of a brokerage firm "permitted" in one or more customs districts, responsible supervision and control is exercised by an individually licensed broker regularly employed within each such district.

Section 641(c)(2) provides that a district permit shall be revoked by operation of law for failure to observe the one-individual-licensee-per-district-office requirement, for a 120-day continuous period. Such failure may also trigger the disciplinary proceedings discussed below.

Section 641(d) sets forth disciplinary procedures against customs brokers, and contemplates imposition of civil monetary penalties, or suspension or revocation of licenses or permits, but not both. Under present law, the Secretary's power to impose sanctions against a broker is limited to suspension or revocation of the license. Because even a short term license suspension may effectively terminate a brokerage business, it is highly desirable that the Secretary be given power to impose monetary penalties as an alternative of lesser severity, where he finds such punishment appropriate. Accordingly, § 641(d)(1) permits Customs to assess monetary penalties against an offending broker or to revoke or suspend his license or permit for commission of any of the infractions listed in subparagraphs (A) through (E), as follows:

"(A) Making, or causing to be made, in any application for a license or permit, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or omitting to state in any such application or report any material fact required to be stated.

"(B) Conviction, at any time after the filing of an application for license, of any felony or misdemeanor which involved (i) the importation or exportation of merchandise or (ii) arose out of the conduct of customs business, or (iii) involved larceny, theft, robbery, extortion, forgery counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds. However, conviction for any of the offenses enumerated in clause (iii) does not empower the Secretary to issue a monetary penalty, because such result would represent in effect, double punishment for commission of a non-Customs offense.

"(C) Violating any provision of any law enforced by the Customs Service, or the rules or regulations issued under such provision.

"(D) Counseling, commanding, inducing, procuring, or knowingly aiding or abetting violation by any other person of any provision of any law enforced by the Customs Service, or the rules and regulations issued under such provision.

"(E) Knowingly employing, or continuing to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary."

Section 641(d)(2)(A) sets forth procedures for the imposition of monetary penalties (which, as stated above, can only be imposed as an alternative to revocation or suspension of a license or permit). These procedures essentially parallel those under § 592 of the Tariff Act (19 U.S.C. 1592), in that Customs is required to issue a "show cause" notice to the broker, advising him of the allegations or complaints against him, and explaining that he has the right to respond in writing within 30 days as to why a penalty should not be assessed. After considering the broker's response, the appropriate customs officer issues a written decision to the broker, either assessing a penalty or cancelling the case. The broker may then file a petition seeking remission or mitigation of the penalty under established law and procedures (19 U.S.C. 1618). The appropriate customs officer thereafter sends the broker a written statement setting forth the final penalty amount and the underlying findings of fact and conclusions of law.

The first sentence of § 641(d)(2)(A) specifies a $30,000 maximum monetary penalty. This maximum amount is intended to apply to all violations committed prior to the date of issue of notice under this provision. In addition, if a broker is engaged in a pattern of conduct which constitutes a continuing violation of only one section of these provisions or the implementing regulations, it shall be considered one violation and not a multiple violation. However, after the broker has been issued a written decision that his pattern of conduct constitutes a violation of § 641 or the regulations, and the broker persists in that pattern of conduct, Customs may institute another penalty proceeding against that same pattern of conduct, also subject to the $30,000 statutory maximum.[1]

Section 641(d)(2)(B) sets forth more formal procedures in the case of license or permit suspension or revocation than in the procedures governing imposition of penalties, including fact-finding before an Administrative Law Judge as a hearing officer. A "show-cause" notice is served upon the broker prior to the hearing; a record of the hearing shall be preserved and copies provided to both sides, who may file post-hearing briefs; and the hearing officer is empowered to make findings of fact and recommendations to the Secretary. The Secretary, after reviewing the hearing officer's report, may impose the sanction recommended, or a lesser sanction. If he believes it warranted, the Secretary may elect to impose monetary penalty not to exceed $30,000 in lieu of a suspension or revocation. However, the Secretary may not increase a sanction beyond that contained in the initial show-cause notice to the broker. By virtue of the new authority granted to Customs to assess monetary penalties against brokers, comparatively few suspension/revocation hearings "on the record" may be anticipated. Hence, the services of an Administrative Law Judge will rarely be required by Customs, and it is therefore believed appropriate that the Administrative Law Judge may be detailed from another constituent unit of the Treasury Department (or from another agency) rather than imposing the costs of one or more full-time Administrative Law Judges within the confines of the Customs Service budget authorization and annual appropriation.

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[1] In connection with the new penalty provisions, it is appropriate to note an understanding between the Customs Service and the National Customs Brokers & Forwarders Association that the implementing regulations will allow a broker to pay the penalty by means of a promissory note with appropriate interest.

Section 641(d)(3) provides that the Secretary may settle and compromise any disciplinary proceeding under §641 in accordance with an agreement reached between the offender and the government, including the reduction of any proposed suspension or revocation of a license or permit, to a monetary penalty. This provision is based in part upon the Secretary's general compromise and settlement authority continued in 19 U.S.C. 1617.

Section 641(d)(4) provides time limitations for the Secretary to commence disciplinary proceedings, namely, 5 years from the date of commission of the violation, or 5 years from the date of discovery in the case of fraud. These limitations parallel those presently contained in 19 U.S.C. 1621 governing actions against importers for violations of the customs laws.

Section 641(e) sets forth procedures for appeals by the broker or other affected party to the Court of International Trade from decisions or orders of the Secretary—

a. Denying issuance of, or revoking a license or permit by operation of law under § 641 (b) or (c), or

b. Revoking or suspending an existing license or permit, or imposing a monetary penalty in lieu thereof, after disciplinary proceedings under § 641(d)(2)(B).

Judicial appeal is taken by filing a written petition with the court within 60 days requesting that the decision or order be modified or set aside, in whole or in part. The clerk of the court shall promptly transmit a copy of such petition to the Secretary. Thereafter, in cases involving § 641(d)(2)(B) proceedings, the Secretary shall file the official administrative record with the court. The ancillary provisions of the bill, amending title 28, set forth procedures for judicial review on the administrative record in such cases (as opposed to a trial *de novo*); therefore, existing law contained in 28 U.S.C. 2635(d) covers this situation (the "petition" specified in § 641(e) is the equivalent of the "summons and complaint" specified in 28 U.S.C. §§ 2632(a) and 2635(d). However, in cases of a denial of issuance of a license or permit, or the revocation of an existing license or permit by operation of law (e.g. Customs notifies a brokerage firm that it no longer qualifies to retain its license and/or permit under § 641(b) or (c)), no administrative record in the true sense is maintained, nor is a trial-type hearing available to the aggrieved party, with right of cross-examination, etc. Hence, the form of judicial review here contemplated is *de novo*, as well as that involved in penalty assessments under § 641(b)(6) and § 641(d)(2)(A); this is covered in the analysis of ancillary provisions, discussed infra.

Section § 641(e)(2) restates present law and provides that the court shall not consider any objection to the Secretary's decision unless such objection was raised in the administrative proceedings, or there were reasonable grounds for failure to raise such objection.

Section 641(e)(3) restates present law that the Secretary's factual determinations shall be conclusive if supported by substantial evidence.

Section § 641(e)(4) provides for the taking of additional evidence upon order by the court, before the appropriate hearing officer, coupled with provision for modification of the Secretary's original findings of fact. The Secretary shall file any new or modified factual findings with the court, together with his recommendation (if any) for the modification or setting aside of his original decision or order. This, too, is a restatement of present law.

Section 641(e)(5) essentially restates present law and provides that the commencement of proceedings for judicial review shall, unless specifically ordered otherwise by the court, operate as a stay of the Secretary's decision (except in the case of a denial of a license or permit).

Section 641(e)(6) provides that if a appeal for judicial review is not filed, the administrative decision denying, revoking or suspending a license or permit shall be final and conclusive. In the case of a monetary penalty imposed in lieu of suspension or revocation of a license or permit under subsection (d)(2)(B), the license shall automaticaly be suspended if payment is not made 60 days after the decision becomes final.

Section 641(f) authorizes the Secretary to prescribe regulations which relate to the customs business of licensed brokers and are considered necessary to protect importers and the revenue, and also to carry out the provision of § 641, including regulations governing issuance of licenses and permits, the keeping of books, accounts and records by brokers, and their documents and correspondence, and the furnishing by brokers of other information relating to their customs business to officers or employees of the United States (e.g., Customs auditors).

Section 641(g) continues the existing requirement in present § 641(e) that licensed customs brokers must file triennial status reports with the Secretary. Section 641(g)(2) authorizes the Secretary to suspend a broker's license for 90 days if the report is not filed by March 1 of the reporting year, and than to revoke it, subject to the following procedures:

(A) The Secretary shall send notice of suspension to the broker no later than March 31 of the reporting year;

(B) The broker may file the required report within 60 days of receipt of the notice, whereupon the license shall be reinstated;

(C) In the event the report is not filed within the 60-day period, the license is revoked without prejudice to the filing of an application for a new license.

Section 641(h) authorizes the Secretary to prescribe reasonable fees and charges to defray Customs' costs in carrying out the provisions of § 641, such as license fees, fees for broker's licensing examinations, etc.

The remaining sections of the bill comprise various conforming amendments to Title 28 of United States Code, together with two amendments to the administrative provisions of the Traiff Act of 1930

Section 3 amends § 1581(g) of Title 28 U.S.C., governing jurisdiction and procedures in the Court of International Trade, to grant that a court exclusive jurisdiction of any civil action commenced to review (1) decisions of the Secretary to deny issuance of a customs broker's license under § 641(b) (2) or (3) to deny issuance of a permit under § 641(c)(1), or to revoke the license or permit by operation of law under § 641 (b)(5) or (c)(2),[1] and (2) decisions of the Secretary to revoke or suspend a customs broker's license or permit or impose a monetary penalty in lieu thereof under § 641(d)(2)(B) of the Tariff Act. This is essentially based upon present law, with appropriate modifications to match the revisions to § 641.

Section 4 amends § 1582(1) of Title 28 U.S.C., governing the court's exclusive jurisdiction of civil actions arising out of import transactions and commenced by the United States, to include collection actions for civil penalties assessed under § 641(a)(6)[2] (pertaining to unlicensed customs brokerage operations) and § 641(d)(2)(A) (pertaining to assessment of monetary penalties against licensed brokers). This amendment does not include monetary penalties assessed upon conclusion of § 641(d)(2)(B) for license/permit revocation or suspension, (that is imposed in lieu thereof); such penalties are reviewable by the Court of International Trade upon a civil action commenced by the broker, as discussed in the analysis of § 5, below.

Section 5 amends § 2631(g) of Title 28 U.S.C., specifying those parties entitled to commence civil actions in the Court of International Trade, by amending subsection (g)(1) to include the person whose license or permit was denied or revoked, in the case of decisions under §§ 641(b) (2) or (3), 641(c)(1), or 641 (b) (5) or (c)2; and by amending subsection (g)(2) to include the person against whom the decision was issued, in the case of decisions to revoke or suspend a license or permit, or impose a monetary penalty in lieu thereof, under § 641(d)(2)(B). This provision restates the substance of present law.

Section 6 amends § 2636(h) of Title 28 U.S.C, governing the time to commence an action before the Court of International Trade, by specifying that a civil action contesting the denial or revocation of a Customs broker's license or permit under subsection (b) or (c) of § 641, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu therof under § 641(d), is barred unless commenced within 60 days after the date of the entry of the decision or order. This follows present law.

Section 7 amends 28 U.S.C. § 2640(a)(5) pertaining to scope and standard of review by the Court of International Trade, by amending subparagraph (5), which provides for review "upon the basis of the record made before the court" (i.e., de novo) to include all decisions made by the Secretary under § 641 of the Tariff Act with the exception of § 641(d)(2)(B) decisions. This latter category shall be reviewed as specified in present § 2640 (d), that is, as provided in 5 U.S.C. § 706.

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[1] Text of bill, at p. 14, line 20, includes "or (c) of the Tariff Act"; words "or (c)" should be deleted.

[2] Text, at p. 15, line 6, erroneously refers to sect. "641(a)(1)(c)."

This bifuraction is based upon commonly accepted standards governing judicial review of administrative actions which either are, or are not, grounded upon a true trial-type hearing before the agency, with rights of cross-examination, provisions for a hearing transcript, etc. In this respect, the amendment follows the present scheme of judicial review of § 641 decisions.

Section 8 adds a new subsection (e) to § 2643 of Title 28 U.S.C., governing the type and scope of relief which the Court of International Trade may grant, to insert a limiting provision applicable to judicial review of the Secretary's monetary penalty decisions under § 641 of the Tariff Act, and specifies that in any proceeding involving assessment or collection of a monetary penalty under §§ 641 (b)(6) or 641(d)(2)(A), the court may not render judgment in an amount greater than sought in the initial pleading of the United States, and may render judgment against the broker in such lesser amount as the court may find appropriate.

Section 9 would amend 19 U.S.C. § 1564 to reverse an administrative ruling which has unjustly prohibited customs brokers from filing notice of lien with the Customs Service regarding merchandise which is in customs custody or in customs bonded warehouse, if the broker has paid freight or other charges on such merchandise. In a 1975 ruling, Customs limited the protection of § 564 to carriers, thereby working injustice and hardship upon customs brokers who had in good faith advanced monies in payment of such charges upon imported merchandise for the account of their principals, and who remained unreimbursed therefor. In such cases, fundamental fairness requires that the broker be regarded as standing in the shoes of the carrier. Therefore § 9 amends 19 U.S.C. 1564 to provide that the right of filing of notice of lien shall extend to customs brokers who otherwise possess a lien under the state law.

Section 10 adds a new provision to 19 U.S.C. § 1520(a), which would authorize the Secretary to make appropriate refund, prior to the liquidation of an entry, whenever it is ascertained that excess duties, fees, charges or exactions were deposited or paid. This language would reverse an administrative ruling of November 25, 1981, holding that refunds of deposits of excess estimated duties prior to liquidation violated the Antideficiency Act, 31 U.S.C. § 1341. It frequently occurs that concededly excess duties have been deposited upon the entry of merchandise and thereafter the liquidation of the entry, and the accompanying duty refund, is delayed (sometimes for long periods) for unrelated reasons, thereby causing unwarranted hardship to importers and brokers. The proposed language merely restores Customs' discretionary authority to make such refunds prior to liquidation, where Customs is satisfied that the equities require such refund.

Section 11 sets forth the effective date of the bill, and certain transitional rules, to provide that the bill shall take effect 180 days following the date of enactment with the following exceptions:

(1) A three year grace period (from the effective date) is granted to allow brokers to conform to the second sentence of § 641(c)(1)(B) (requiring each Customs broker "permitted" in a particular district to employ a licensed individual broker in that district to exercise responsible supervision and control), and to § 641(c)(2) (pertaining to revocation of a permit for failure to meet the new § 641(c)(1)(B) requirements).

(2) Sections (9) and (10) of the bill, pertaining to liens and administrative refunds respectively, will take effect upon the date of enactment.

(3) Licenses in effect on the date of enactment shall continue in force as licenses to transact Customs brokerage business, subject to the provisions of the effective dates and transitional rules appearing elsewhere in this section; and licenses in effect on the date of enactment shall be accepted as permits for the district or districts covered by that license.

(4) Any proceeding for revocation or suspension of a license instituted prior to the effective date shall continue and be governed by law in effect when the proceeding was instituted.

Section 12 provides for the separability of provisions should any part of the bill be held invalid as to any person or circumstance.

SUGGESTED AMENDMENTS

Upon further study of H.R. 5418 we urge that the following amendments of a minor or technical nature, be adopted:

(1) At page 9, line 14, insert "based solely on the record" after the word "decision." This is to overcome concern that the Secretary might rely on matters made known to him outside the record. The new language should help to ensure that prin-

ciples of administrative due process were properly adhered to during revocation or suspension proceedings.

(2) At page 14, line 13, delete the period, insert a semicolon, and add: "*Provided*, That no fees shall be imposed to defray the costs of an audit or of disciplinary proceedings of any nature." Although Customs agreed during our discussions earlier this year that no fees would be imposed for these purposes, we believe that the statute should be clearly drawn so as to avoid any doubts on this score.

(3) At page 16, line 19, renumber present sub-section (e) as paragraph (e)(1) and add a new paragraph (e)(2) as follows:

"In any proceeding commenced under Section 1581(g) of title 28, United States Code to review a decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit or assess a monetary penalty in lieu thereof, the court may not impose a more severe sanction or a greater monetary penalty than that finally imposed by the Secretary after completion of all administrative review."

We think that the foregoing language is necessary to completely remove any doubt (and its chilling effect on the invocation of judicial review) that the broker risked more severe punishment by appealing to the Court.

(4) At page 17, line 5, after the words "common law" add: ", or by order of any court of competent jurisdiction,". This is a necessary complement to the present wording, in order to ensure complete coverage of this remedial section.

We also urge that certain minor errors in punctuation and grammar be corrected, as follows:

Page 1, line 10: Change brokers to broker's.

Page 2, line 10: In subsection heading, change Custom to Customs.

Page 2, lines 14 and 17 and page 3, lines 5 and 10: change broker to broker's.

Page 3, line 16: Insert comma sign after corporation.

Page 4, lines 4, 12 and 14: Change brokers to broker's.

Page 11, line 17: In heading, change evidences to evidence.

Page 14, lines 19, 21 and 25, and page 15, lines 11 and 13: Change brokers to broker's.

International
Freight Forwarders & Customs Brokers Association
of New Orleans. Inc.

INTERNATIONAL TRADE MART • NEW ORLEANS, LA. 70130 • (504) 525-7201

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Ex-Officio

June 15, 1984

National Customs Borkers & Forwarders
Association of America, Inc.
One World Trade Center
Suite 1109
New York, NY 10048

SUBJECT: H. R. 5418 Customs Brokers Act of 1984

The long awaited legislation, above referenced, has been reviewed by our Board of Directors. While additional compromises might be desirable, the bill's overall benefits merit the support and endorsement of our membership to its successful passage.

The National committeemen who worked diligently in concert with membership, customs and legal counsel to bring this legislation to the forefront are to be commended for their efforts.

Sincerely,

Frank G. Di Benedetto,
President

FGDiB/rp

affiliated member of . . .

Houston Customhouse Brokers and Freight Forwarders Association
P.O. Box 53359 • Houston, Texas 77052

June 15, 1984

Mr. William St. John, Jr.
President, National Customs Brokers and
Forwarders Association of America, Inc.
One World Trade Center
Suite 1109
New York, NY 10048

RE: HR 5418, Customs Brokers Act of 1984

Dear Mr. St. John,

The above referenced proposed legislation is considered by the members of the Houston Customhouse Brokers & Freight Forwarders Association as a workable and important matter. Like all legislation, it is not what we consider perfect but it is acceptable. We, therefore, support this legislation and encourage you to do all possible for its passage.

Respectfully,

J. F. Mooring
President
Houston Customhouse Brokers and
Freight Forwarders Association

JFM/jw

Affiliate Member

Executive Office Phone: 713-228-7447
Writers Phone: 713-443-7750

w.j. byrnes & co. / byrnesair
p.o. box 8206 • san francisco, ca 94128 • (415) 692-1142
100 rollins rd. • millbrae, ca 94030 • telex no. 47 06 96

June 15, 1984

Mr. William St. John, President
National Customs Brokers & Forwarders Association
One World Trade Center, Suite 1109
New York, New York 10048

Dear Billy:

We would like to thank the National Association for all of the work they have done to help pass the "Customs Brokers Act of 1984", HR 5418.

We support your position!

Please let us know if we or our local association, The San Francisco Customs Brokers & Freight Forwarders Association, can be of any other help.

Yours Very Truly,

W.J. BYRNES & CO.

Steven R. Enderson
Vice Presidnet

84. 06/20 14:27 P03 *TELEX EXPRESS 212 608-2121

DETROIT
Customhouse Brokers & Foreign Freight Forwarde
ASSOCIATION IN

JUNE 18, 1984

Mr. Wm. St. John, Jr.
President
National Customhouse Brokers & Freight Forwarders Association
of America, Incorporated
One World Trade Center
Suite 1109
New York, New York 10048

REPLY 1

Dear Mr. St. John:

This is to advise you that the Detroit Customhouse Brokers & Foreign Freight Forwarders Association, Inc., strongly endorse H. R. 5418 and appreciate your efforts in support of its passage.

We believe that this version of the Customs Brokers Act of 1984 is most deserving of passage, and know that you will represent us well in the Congressional hearing.

Sincerely,

Les Jones, President

dat

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VIA: 888259

TO: 62666720

NCBFAA

NCBFAA

MILES ELP

JUNE 20 84

ATTN JOHN HAMMON

N.C.B.F.A.A.

WE THE SOUTHERN BROKERS ASSOCIATION HEREBY SUPPORT THE CUSTOMS ACT OF 1984.

IF WE CAN BE OF FURTHER ASSISTANCE, PLEASE FEEL FREE TO CONTACT THE UNDERSIGNED.

REGARDS,
RUDOLPH M. MILES
DIRECTOR
SOUTHERN BROKERS ASSOC.
NCBFAA
MILES ELP

84. 06/20 14:27 P01 *TELEX EXPRESS 212 608-2121

EASYLINK MBX 241834A001 20JUN84 11:01/12:11 EST

VIA: 888259

TO: 62666720

6/20/84

ATT: BILL ST. JOHN NCBFAA

RE: CUSTOMS BROKERS ACT OF 1984 (HR 5418)

PLEASE BE ADVISED THAT THE SAN DIEGO BROKERS ASSOCIATION FULLY SUPPORTS THE SUBJECT ACT. PLEASE VOICE OUR SUPPORT AT THIS WEEKS CONGRESSIONAL HEARINGS.

RA NEAL
PRESIDENT
SAN DIEGO BROKERS ASSOCIATION.
NCBFAA

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VIA: 888259

TO: 62666720

NCBFAA

NCBFAA

DJ POWERS EAPT

WUTCO G

JUNE 19, 1984

ATTN MR BILL ST JOHN
PRESIDENT
NACHBIFF

ON BEHALF OF THE IFF/CHB ASSOCIATION OF ATLANTA, I WOULD LIKE TO EXPRESS OUR SUPPORT FOR THE PASSAGE OF H.R.-5418, PENDING AT THIS TIME. IT IS OUR UNIFIED OPINION THAT PASSAGE OF THIS BILL IS IN THE BEST INTEREST OF NOT ONLY BROKERS AND FORWARDERS, BUT THE MARITIME INDUSTRY AND IMPORTING PUBLIC AS WELL. WE STRONGLY SUPPORT AND URGE PASSAGE AT THIS TIME.

KINDEST REGARDS,

WILLIAM C CONAWAY

VICE PRESIDENT

IFF/CHB ASSOC OF ATLANTA, GA

/G
CI
D

Baltimore Customhouse Brokers
and Forwarders Association
Port of Baltimore Maryland

Reply to: P. O. Box 1717
Baltimore, MD 21203

Mr. William St. John, Jr.
President
National Customs Brokers &
Forwarders Association of America, Inc.
One World Trade Center
Suite 1109
New York, NY 10048

VIA EXPRESS MAIL

Dear Mr. St. John:

On behalf of the thirty-two member firms in our Association, I am writing to tell you that we have reviewed the provision of the Customs Brokers Act of 1984 (H.R. 5418) and strongly favor the passage of this legislation.

Although there are some provisions of the bill that many members do not approve of, overall we felt that the bill is very important to us and the National Association should vigorously press to promote its passage. Further, we feel the bill is important to protect importers from incompetent and unscrupulous brokers and non-licensed individuals.

If I or any other members of our Association can assist you in any manner, please do not hesitate to call on us.

Very truly yours,

BALTIMORE CUSTOMHOUSE BROKERS
AND FORWARDERS ASSOCIATION

Joseph Dash
President

JD/bjc

since 1840

STONE & DOWNER CO.

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FMC No. 972

National Custom Brokers & Forwarders
Association of America, Inc.
One World Trade Center
Suite 1109
New York, NY 10048
att. William St. John, Jr.
President

May 25 1984

Dear Bill:

Re: HR 5418 Customs Brokers Act of 1984

With reference to the above legislation, this is to advise you that the Boston Customs Brokers & Forwarder's Association wishes to endorse passage, and in that light, we submit our support for HR 5418.

Like many others, we agree that additional compromises from Customs are desirable, and not without merit. However, we also agree with the position of National that this is the best bill we can obtain at this time and there are far too many good points in the bill not to work towards its success.

The Boston Association applauds the efforts of the National leadership in bringing this long awaited legislation to this near climactic point.

Regards,
Boston Custom Brokers
& Forwarders Association

Paul K. LaRoque
President

c.c. Bill Connolly (V.Pres. - Boston)
c.c. Joe Leahy (Secretary - Boston)

Customs Brokers & Freight Forwarders
Association of Charleston, S. C., Inc.
ORGANIZED 1961
P. O. BOX 781
Charleston, South Carolina 29402

June 14, 1984

National Customs Brokers & Forwarders
Association of America, Inc.
One World Trade Center - Suite 1109
New York, New York 10048

Attention: Mr. Bill St. John, President

Dear Bill:

It is our understanding that a congressional hearing on HR 5418 is scheduled for next week. Please accept this letter as our association's approval and support of NCBFAA actions in regards to (HR 5418).

Very truly yours,

Customs Brokers & Freight Forwarders
Association of Charleston, S.C., Inc.

M. H. Mikell, Jr.
President

MHM/mlp

EASYLINK MBX 124781A001 19JUN84 09:10/11:06 EST

VIA: 888259

TO: 62666720

NCBFAA

JUNE 19, 1984

NATIONAL CUSTOMS BROKERS ASSOCIATION

ATTENTION: MR. WILLIAM ST. JOHN, JR.

THE CHICAGO CUSTOMS BROKERS AND FORWARDERS ASSOCIATION IS VERY FAMILIAR WITH, AND IS FULLY SUPPORTIVE OF THE CUSTOMS BROKERS ACT OF 1984 (HR 5418)

REGARDS,

D. MC CAULEY

VICE PRESIDENT

EASYLINK MBX 089580A001 18JUN84 17:32/08:42 EST

VIA: 888259

TO: 62666720

UKAAEAAJJKKKKKKKKKKK

TO: COMMITTEE
CONGRESSIONAL HEARING
OF CUSTOMS BROKERS ACT OF 1984
WASHINGTON, D.C.

C/O NCBFAA

REF: HR 5418,

GENTLEMEN:

PLEASE BE ADVISED THAT THE COLUMBIA RIVER CUSTOMS BROKERS AND FOREIGN FRT FORWARDS ASSN. SUPPORTS THE NCBFAA POSITION ON THE CUSTOMS BROKERS ACT OF 1984, HR 5418.

SINCERELY,

COLUMBIA RIVER CUSTOMS BROKERS AND FGN FRT FWDRS ASSN.
GENE BROSTERHOUS, PRESIDENT

EASYLINK MBX 155350A001 19JUN84 12:59/13:00 EST

VIA: 888259

TO: 62666720

NCBFAA

BAB INC ELP

IS THIS THE NATIONAL CUSTOMS BROKERS & FORWARDER ASSOC.?

CI

TO: NATIONAL CUSTOMS BROKERS & FORARDER ASSOC.

FROM: EL PASO CUSTOMS BROKERS ASSOCIATION.

THIS IS TO CONFIRM OUR SUPPORT OF HR5418

CUSTOMS BROKER ACT OF 1984

JOE ALCANTAR , JR.

PRESIDENT

155487A 19JUN84 13:00 EST

THE LOS ANGELES CUSTOMS AND FREIGHT BROKERS ASSOCIATION, INC.

June 14, 1984

PLEASE REPLY TO Wayne Withrow & Co.
~~796 West 9th Street~~
San Pedro CA 90731
(213) 775-6663

Mr. William St. John, President
NATIONAL CUSTOMS BROKERS & FORWARDERS
ASSOCIATION OF AMERICA, INC.
One World Trade Center, Suite 1109
New York NY 10048

Dear Bill:

Our organization, which is now 100 members strong, supports and endorses the efforts of NCBFAA toward the Customs Brokers Act of 1984 (HR 5418). We believe that this bill is necessary, not only for the protection of our industry, but for the protection of Customs and the importing public.

We wish to be on record as being in favor of the approval of HR 5418, and urge all individuals connected with the bill to approve same.

I would also point out that we appreciate NCBFAA's enormous effort on this bill.

Sincerely,

THE LOS ANGELES CUSTOMS AND FREIGHT BROKERS ASSOCIATION, INC.

John F. Peterson
President

THE LOS ANGELES CUSTOMS AND FREIGHT BROKERS ASSOCIATION, INC.

PLEASE REPLY TO Wayne Withrow & Co.
796 W. 9th St.
San Pedro CA 90731
(213) 775-6663

May 18, 1984

Mr. William St. John, Jr.
President
NATIONAL CUSTOMS BROKERS & FORWARDERS
ASSOCIATION OF AMERICA, INC.
One World Trade Center, Suite 1109
New York NY 10048

Dear Bill:

Pursuant to your letter of May 4, 1984, I have circulated a copy of H.R.5418 to our Board of Directors for their opinion. At this time, no one on our board has advised me of any personal difficulty with the bill.

I am well aware of the time and effort expended on this bill, from my close association with Art Litman. I wish to commend all of you that have worked so hard in our behalf.

The Los Angeles Customs and Freight Brokers Association supports this legislation as well, and will be pleased to communicate with Congressmen when necessary. We appreciate your efforts.

Sincerely,

THE LOS ANGELES CUSTOMS AND FREIGHT BROKERS ASSOCIATION, INC.

John P. Peterson
President

Bcc: JH.
JH.K
NAI

P.O. Box 58009 * Dallas, Texas 75258 * (214) 744-5157 * Telex 79-2992

MA MID - AMERICA
CUSTOMS BROKERS & FOREIGN FREIGHT FORWARDERS ASSOCIATION

June 8, 1984

National Customs Brokers & Forwarders Association
of America, Inc.
One World Trade Center
Suite 1109
New York, NY 10048

Attn: Mr. William St. John
President

Dear Bill,

In response to your letter dated May 4, 1984, our association generally supports H.R. 5418. However, we also have grave reservations concerning the monetary penalty provisions and would prefer that these be negotiated out in the event of a further opportunity to do so.

Very truly yours,

D. J. Spkin
President

DJs/rm

JUN 1 [illegible] 1984

ASSOCIATION OF FORWARDING AGENTS AND FOREIGN FREIGHT BROKERS
OF MOBILE, INCORPORATED
MOBILE, ALABAMA

June 18, 1984

National Customs Brokers & Forwarders
Association of America, Inc.
One World Trade Center
New York, New York 10048

Gentlemen:

We the, Association of Forwarding Agents and Foreign Freight Brokers of Mobile, Incorporated, support the Customs Brokerage Act of 1984, HR-5418.

We feel this would be beneficial to the Customs House Brokers.

With best regards,

Yours very truly,

ASSOCIATION OF FORWARDING AGENTS
AND FOREIGN FREIGHT BROKERS OF MOBILE, INC.

Daniel F. Cleveland
President

dfc/

LOTHAR KLESTADT
President

COLIN UNSWORTH
Vice President-Export

HAROLD G. BRAUNER
Vice President-Import

HERBERT A. BRANDON
Secretary & Treasurer

NEW YORK FOREIGN FREIGHT FORWARDERS
AND BROKERS ASS'N., INC.
ESTABLISHED 1917

Suite 3100
One World Trade Center
New York, N.Y. 10048
Tel. (212) 432-0750

June 14, 1984

National Customs Brokers & Forwarders
Association of America, Inc.
1 World Trade Center, Suite 1109
New York, NY 10048

Gentlemen:

The Customs Brokers Act of 1984 (HR 5418) has been submitted to our Customs Committee for thorough analysis.

We are pleased to confirm that we agree with the version proposed by the National Customs Brokers & Forwarders Association of America, Inc., and support it fully.

Very truly yours,

New York Foreign Freight Forwarders
and Brokers Association, Inc.

Lothar Klestadt, President

LK/ms

EASYLINK MBX 144510A001 19JUN84 11:34/13:00 EST

VIA: 888259

TO: 62666720

NCBFAA;

SEKIN CO DAL

MSG 843632 KJ

ATTN JOHN HAMMOND

RE CUSTOMS BROKERS ACCT

THE NORTH TEXAS CUSTOMS BROKERS N FRT FRWRDRS ASSOCIATION SUPPORTS

THE CUSTOMS BROKERS ACT CURRENTLY BEFORE LEGISLATURE

RGDS

DARRELL SEKIN JR / PRESIDENT / NTCBFRA

SEKIN CO DAL

NCBFAA

CUSTOMHOUSE BROKERS ASSOCIATION
NORTHERN U.S. BORDER

OFFICE of the PRESIDENT
B. W. Anderson
C. J. Tower & Sons
128 Dearborn St.
Buffalo, NY 14207

OFFICE of the TREASURER
R. Gudmundson
Norman G. Jensen, Inc.
3006 S. Hennepin Avenue
Minneapolis, MN 55408

OFFICE of the SECRETARY
J. L. Gregory
C. F. Liebert, Inc.
P. O. Drawer L
Blaine, WA 98230

June 14, 1984

William St.John, Jr.-President
National Customs Brokers and Forwarders Association of America
One World Trade Center, Suite 1109
New York, N. Y. 10048

Subject: Customs Brokers Act of 1984, HR 5418

Dear Mr. St. John:

On behalf of the 24 members of the Customhouse Brokers Association Northern U. S. Border I wish to express our support of the Customs Brokers Act of 1984.

We would ask that you express our support of this legislation during the testimony of the National Association at the congressional hearings.

We are all well aware of the work that has gone into the drafting of this legislation by both the U. S. Customs and the National Association. We all feel stongly that this is timely and necessary legislation that will, in the final analysis, strengthen our industry. We certainly do not want the brokerage industry deregulated thus allowing anyone to go into business without proving their worth in any way. Maintaining strict standards is a must in this industry and we would certainly encourage Congress, through the enactment of this legislation, to continue regulating the brokerage industry, using the avenue of strong customs regulations.

Sincerely,

James L Gregory

Customhouse Brokers Association
Northern U.S. Border
James L. Gregory-Secretary

cc: Burtram Anderson-President

Philadelphia Customs Brokers
& Forwarders Association

P.O. Box 815 Philadelphia, PA 19105

June 15, 1984

National Customs Brokers & Forwarders Association
One World Trade Center
Suite 1109
New York, NY 10048

Gentlemen:

The Philadelphia Customs Brokers & Forwarders Association strongly supports passage of The Customs Brokers Act of 1984 (HR5418).

We support your efforts to ensure passage of this act and the Philadelphia Association is ready to further support you as needed.

Yours truly,

David M. Weiss
President

EASYLINK MBX 095458A001 18JUN84 18:54/08:42 EST

VIA: 888259

TO: 62666720

NCBFAA

RAUSCHCO SFO

TO: NCBFAA - HEADQUARTERS NEW YORK CITY

CONCERNING THE CUSTOMS BROKERS ACT OF 1984 (H R 5418)

WE ARE IN COMPLETE SUPPORT OF THIS MUCH NEEDED LEGISLATION
AND FULLY SUPPORT THE PROVISIONS OF THE BILL AS SUBMITTED
BY NCBFAA

SIGNED: JAY HELSTERN, SAN FRANCISCO CUSTOMS BROKERS AND FREIGHT
FORWARDERS ASSOCN.

RAUSCHCO SFO

NCBFAA

EASYLINK MBX 157695A001 19JUN84 13:16/13:22 EST

VIA: 888259

TO: 62666720

6/19/84

ATTN: BILL ST. JOHN NCBFAA

RE: CUSTOMS BROKERS ACT OF 1984 (HR 5418)

PLEASE BE ADVISED THAT THE SAN YSIDRO BROKERS ASSOCIATION FULLY SUPPORTS THE SUBJECT ACT. PLEASE VOICE OUR SUPPORT AT THIS WEEKS CONGRESSIONAL HEARINGS.

RA NEAL

SEC/TREAS

SAN YSIDRO BROKERS ASSOC

MMM

NCBFAA

158375A 19JUN84 13:22 EST

PTS

Independent Freight Forwarders and Customs Brokers Association
of Savannah, Inc.
POST OFFICE BOX 1485
SAVANNAH, GEORGIA 31402

MEMBERS
ALEXANDER INTERNATIONAL, INC
ANDERSON SHIPPING CO.
W.G. CARROLL & CO. INC
FITZGERALD FORWARDING CO. INC
ARTHUR J. FRITZ & CO
HIPAGE COMPANY
R.G. HOBELMANN
JOHN S. JAMES COMPANY
JENNINGS COMPANY
KUEHNE & NAGEL, INC.
McTEER INTERNATIONAL FREIGHT FWDING CO
E.L. MOBLEY, INC.
F.W. MYERS (ATLANTIC) & CO.
D.J. POWERS CO. INC.
FREDERICK RICHARDS OF GA., INC
HARPER ROBINSON & CO. INC.
ROGERS & BROWN CUSTOMS BROKERS
SCHENKERS INTERNATIONAL FORWARDERS, INC
GEORGE W. WISE, JR.
CUNNINGHAM & MURRY, INC.

June 18, 1984

National Customs Brokers & Forwarders Association of Am.,Inc.
One World Trade Center, Suite 1109
New York, N.Y. 10048/(212)432-0050

RE: Customs Broker Act of 1984 - HR 5418

To Whom it may concern:

Our association, representing twenty Customs Broker and Freight Forwarding Firms in the port of Savannah, Georgia, concur totally with and vigorously support the passage of the above legislation. We feel it is vital to our industry that this Act be strongly considered in its entirety..

It is our hope that this Act will ultimately be adopted.

RICHARD E. CARTER
President

EASYLINK MBX 143532A001 19JUN84 11:28/11:30 EST

VIA: 888259

TO: 62666720

NCBFAANATIONAL CUSTOMS BROKERS + FORWARDERS ASSOCIATION OF AMERICA

ATTN: MR. WILLIAM ST. JOHN, JR.

RE: H.R. 5418

THE OFFICERS AND BOARD OF DIRECTORS OF THE EXPORT IMPORT ASSOCIATION OF VIRGINIA DO HEREBY LEND OUR TOTAL SUPPORT FOR THE ABOVE REFERENCED BILL.

OUR MEMBERSHIP INCLUDES THE CUSTOMHOUSE BROKERS LOCATED IN THE VIRGINIA PORT CITIES OF NORFOLK,NEWPORT NEWS, VIRGINIA BEACH, AND CHESAPEAKE.

EXPORT IMPORT ASSOCIATION OF VIRGINIA
MEADE G. STONE,JR
PRESIDENT

NCBFAA....

JUN 15 1984

CUSTOMHOUSE BROKERS & INTERNATIONAL FREIGHT FORWARDERS ASSOCIATION OF WASHINGTON STATE
P. O. Box 1435, Tacoma, Wa. 98401

June 14, 1984

Mr. William St. John, Jr., President
National Customs Brokers & Forwarders Association of America, Inc.
One World Trade Center, Suite 1109
New York, NY 10048

Re: Customs Brokers Act of 1984, HR 5419

Dear Mr. St. John:

As you are aware, our Association represents the vast majority of Customs Brokers and Foreign Freight Forwarders in the State of Washington. Our membership strongly supports passage of the above legislation and requests that you convey this message in the Congressional Hearings to be held next week.

We believe passage of this Bill is vital to the well-being of our industry and therefore urge its passing.

Thank you.

Cordially,

CUSTOMHOUSE BROKERS & INTERNATIONAL
FREIGHT FORWARDERS ASSOCIATION OF
WASHINGTON STATE

R. M. Kennard, President

RMK/cm

"A National Association of International Scope"

National Customs Brokers & Forwarders Association of America, Inc.
One World Trade Center, Suite 1109/New York, NY 10048/(212) 432-0050

EASYLINK MBX 068495A001 18JUN84 14:51/17:21 EST
VIA: 888259
TO: 62666720
1550 EDT
NCBFAA
NCBFAA
NEW YORK

PLEASE BE ADVISED THAT THE MEMBERSHIP
OF WASHINGTON CUSTOMS BROKERS AND
FWDRS ASSOC FULLY SUPPORT THE PROVISIONS
OF H.R. 5418.

PLEASE MAKE OUR WISHES KNOWN AT THE
HEARINGS.
SHIRLEY LAING - PRESIDENT
WCBFFA...,
NCBFAA.....COSIUI
MMMM

EASYLINK MBX 143805A001 19JUN84 11:30/11:30 EST

VIA: 888259

WU INFOMASTER 1-007935I171 06/19/84

TO: 62666720

NCBFAA

WU INFOMASTER 1-007935I171 06/19/84

TWX JOHNJAMES WILM

ZCZC WILMINGTON NC JUNE 19 1984

TLX 888259 NCBFAA

BT

JOHNJAMES WILM

JUNE 19 1984

ATTN MR JOHN HAMMONDS

FROM CUSTOM BROKERS AND FREIGHT FORWARDERS ASSOC OF WILMINGTON

BY VIRTUE OF THIS TLX MSG WE WISH TO ACKNOWLEDGE OUR SUPPORT FOR PASSAGE OF THE NCBFAA'S CUSTOM BROKERS ACT OF 1984 (HR 5418) PLS WORK DILIGENTLY FOR THE PASSAGE OF THIS BILL.

BONNY COX

PRESIDENT

1129 EST
NCBFAA

Chairman GIBBONS. We appreciate your coming here and working. We realize that you are an informal or formal adjunct to the whole governmental system and you help us collect a lot of taxes and help us regulate a lot of trade essential for international purposes.

Let's hear next from the J.F.K. Airport Customs Brokers Association and then we will go to Customs.

STATEMENT OF CHARLES MERENDINO, PRESIDENT, J.F.K. AIRPORT CUSTOMS BROKERS ASSOCIATION, ACCOMPANIED BY CARL SOLLER, COUNSEL

Mr. MERENDINO. My name is Charles Merendino, president of J.F.K. Airport Customs Brokers Association, and with me is Carl Soller, counsel for the J.F.K. Airport Customs Brokers Association, with Soller, Singer & Horn.

This bill should correct some of the flaws exposed in current law during the past 54 years. We therefore support the objectives of H.R. 5418. We have certain suggestions which we believe will make the bill more closely reflect the intentions of the framers and alleviate the possible conflicts with other existing laws. We also support the recommended changes presented by the National Association of Customs Brokers and Freight Forwarders as they originated with our association.

With regard to suspension and revocation section (d)(2)(B) and monetary penalties section (d)(2)(A), for the first time in 90 years that customs brokers have been licensed, H.R. 5418 introduces the concept of financial penalties for violations of professional responsibilities. We support the concept of financial penalties and urge especially that they be accepted in lieu of an attempted suspension or revocation of a license or permit.

We suggest that although financial penalties may be an appropriate substitute for a suspension or revocation, it cannot be said that the suspension or revocation are acceptable substitutes for financial penalties. We strongly suggest that the bill make it clear that suspension or revocation are appropriate penalties only for certain enumerated types or classes of violations and only then for serious violations.

The bill puts a $30,000 cap on penalties but fails to specify that the penalties should be graduated according to the nature of the violation. It is important that the law provide some discernible standard by which Customs can formulate regulations that can be consistently enforced and which would not result in all or nothing at all penalties.

The consequences of these penalties are substantial. We believe that discernible standards within the statute are necessary to insure consistent interpretation and enforcement of the law.

As a less desirable but acceptable alternative to the inclusion of clear standards within the statute, we suggest that the effective date of these sanctions including suspension, revocation and monetary penalties be delayed until the regulations implementing them have been put into place. We have found that it often takes well over a year for new regulations to be put into effect.

During the transition period, enforcement of new laws has been inconsistent and mere interim guidelines have not carried the force of regulations and are usually implemented unilaterally by the Customs Service. By delaying the effective date of implementation until the regulations are in place we could insure more fair and consistent enforcement of the law.

Regarding judicial appeal and consideration of objections, section (e)(2), consistent with current law generally, section (e)(2) of the bill prescribes that on appeal the Court of International Trade may consider objections only if they have been raised before a hearing officer. We agree with the general proposition.

However, an error in the wording of section (e)(2) has created a procedural impossibility. As drafted, the bill provides that the court shall not consider any objection to the decision or order of the Secretary unless that objection was raised before the hearing officer. The difficulty is that the Secretary renders his decision or order only after the conclusion of the hearings. It is therefore impossible to object to a decision or order that could not yet have been rendered.

We believe that the intention was to have the objections to testimony and evidence raised before the hearing officer and we suggest that this be corrected by appropriate language.

Regarding the triennial report by customs brokers, section (g) of the bill provides for triennial reports of the U.S. Customs Service by licensed customs brokers of their status and address. As drafted, the bill provides that licensed suspension and revocation are the appropriate penalties for failing to file notice. We recognize Customs' need for accurate records on brokers but suggest that suspension and revocation are unnecessarily harsh penalties for this type of violation and unnecessary to achieve the purpose of the section.

This is an appropriate situation for a minimum financial penalty and not suspension or revocation.

Regarding regulations of the Secretary, section (f) of the bill authorizes regulations regarding a customs broker's keeping of books and records and the furnishing by customs brokers of any information relating to their customs business to any duly accredited officer or employee of the United States. We wish to raise three points and suggestion regarding this section.

First, the language of this section, as drafted, conflicts with other already existing sections of the Tariff Act which require the keeping of books and records and provide the authority to gain access to them. Section 509 of the tariff makes it very clear what documents may be sought, under what circumstances they may be sought and the administrative summons procedures to be used to obtain them.

Second, the language of the bill expands the authority of other agencies to gain access to these records. Unless the Government agency other than Customs has its own authority or judicial means of obtaining records from private individuals, we do not believe that this bill should grant them that authority. Under the language of the bill as drafted, regulations could require a broker to turn over records to a U.S. attorney in a criminal or other investigation, records that would not otherwise be obtainable because of constitutional protection.

Third, this bill is intended to give Customs the authority to oversee the activity of customs brokers. Clearly, Customs needs to have access to the broker's records relating to Customs business in order to fulfill their audit and enforcement obligations. What concerns us is the apparent authority given to persons outside of Customs and a corresponding potential loss of control over the records.

Regarding customs' brokers licenses, section (b), customs brokers' permits, section (c), we would like it made clear in the bill that a permit be automatically issued so long as a broker has a license and has an office in the district where he conducts his business and also make it clear in the statute that it will be mandatory and not discretionary.

In closing, I would like to reiterate that the J.F.K. Airport Customs Brokers Association supports H.R. 5418 if the changes as discussed are adopted.

The points which we have raised we believe will result in a better, more consistent bill. Our thrust and position has been that nothing yields a better law than the standards that are in the law itself. If past statutes regulating our industry are any indication, this bill will outlive its framers. Consequently, the standards that will be reflected in regulations and guidelines must be clearly discernible from the statute itself. They should not be left to later interpretations of legislative history and old regulations and to fading memories and mere notions of what was originally intended.

Within one week we will submit to the committee our proposed amendments reflecting our suggestions. Thank you very much for your attention and for this opportunity.

[The prepared statement follows:]

STATEMENT OF CHARLES MERENDINO, PRESIDENT, J.F.K. AIRPORT CUSTOMS BROKERS ASSOCIATION

My name is Charles Merendino. I am the President of the J.F.K. Airport Customs Brokers Association.

Our Association is in favor of a bill that will encourage high standards in our industry and correct some of the flaws that have been exposed in the current law during the past 54 years. We therefore support the general objectives of H.R. 5418.

We have certain suggestions to offer which we believe will make the bill more closely reflect the intentions of the framers and may alleviate possible conflicts with other existing laws.

We also support the recommended changes presented by the National Association of Customs Brokers and Freight Forwarders as they originated with our Association.

SUSPENSION OR REVOCATION, SECTION (d) (2) (B); MONETARY PENALTIES, SECTION (d) (2) (A)

For the first time in the 90 years that Customs Brokers have been licensed, H.R. 5418 introduces the concept of financial penalties for violations of professional responsibilities. We support the concept of financial penalties and urge especially that they be accepted in lieu of an attempted suspension or revocation of a license or permit. We suggest that, although financial penalties may be an appropriate substitute for a suspension or revocation, it cannot be said that suspension or revocation are acceptable substitutes for financial penalties. We strongly suggest that the Bill make it clear that suspension or revocation are appropriate penalties only for certain enumerated types or classes of violations and only for serious violations.

The Bill puts a $30,000 cap on penalties, but fails to specify that the penalties should be graduated according to the nature of the violation. It is important that the Law provide some discernible standards by which Customs can formulate regulations that can be consistently enforced and which would not result in "all or nothing" penalties.

Under the old Customs 592 Fraud statute (19 USC 1592), and under the current Customs 592 Fraud statute we saw that when the statute provides for maximum penalties, it has normally been the meximum penalty for a class of violation that is sought. Although we are sure that customs Headquarters does not intend to dole out $30,000 penalties for all types of violations, experience has shown that this is commonly is the practice at the local level. As a result, we urge that standards be set forth within the statute to avoid setting up a single degree financial penalty without regard to culpability or the nature of the violation.

The consequences of these penalties are substantial. We believe that discernable standards within the statute are necessary to insure consistent interpretation and enforcement of the law.

As a less desirable, but acceptable alternative to the inclusion of clear standards within the statute, we suggest that the effective date of these sanctions (including suspension, revocation, and monetary penalties) be delayed until the regulations implementing them have been put into place.

We have found that it often takes well over a year for new regulations to be put into effect. During the transition period, enforcement of new laws has been inconsistent; mere interim guidelines have not carried the force of regulations, and are usually implemented unilaterally by the Customs Service. By delaying the effective date of implementation until the regulations are in place, we can ensure more fair and consistent enforcement of the law.

JUDICIAL APPEAL—CONSIDERATION OF OBJECTIONS, SECTION (e) (2)

Consistent with current law generally, section (e)(2) of the Bill prescribes that on appeal, the Court of International Trade may consider objections only if they have been raised before a hearing officer. We agree with the general proposition; however an error in the wording of section (e)(2) has created a procedural impossibility.

As drafted, the Bill provides that "The court shall not consider any objection to the decision or order of the Secretary, unless that objection was raised before the hearing officer. . . ." The difficulty is that the Secretary renders his decision or order only after the conclusion of the hearings. It is therefore impossible to object to a decision or order that could not yet have been rendered. We believe that the intention was to have objections to testimony and evidence raised before the hearing officer. We suggest that this be corrected by appropriate language.

TRIENNIAL REPORT BY CUSTOMS BROKERS, SECTION (g)

Section (g) of the Bill provides for triennial reports to the United States Customs Service by lecensed Brokers of their status and address. As drafted, the Bill provides that license suspension and revocation are the appropriate penalties for failing to file the notice. We recognize Customs' need for accurate records on Brokers, but suggest that suspension and revocation are unnecessarily harsh penalties for this type of violation and unnecessary to achieve the purpsoe of the section. This is an appropriate situation for a minimal financial penalty, not suspension or revocation. The Bill further provides in section (e)(6) that a license may be suspended for the failure to pay the penalty. Any suspension would be automatically lifted upon the filing of the notices and payment of the late filing penalty. In this way the Bill would have the bite Customs believes is necessary to enforce the filing requirement without resulting in a penalty disproportionate to the nature of the violation.

REGULATIONS OF THE SECRETARY, SECTION (f)

Section (f) of the Bill authorizes regulations regarding a Customs Brokers' keeping of books and records and "the furnishing by Customs Brokers of any information relating to their customs business to *any duly accredited officer or employee of the United States.*" [emphasis added]

We wish to raise three points and suggestions regarding this section.

First, the language of this section, as drafted, conflicts with other already existing sections of the Tariff Act which require the keeping of books and records and provide the authority to gain access to them. Section 509 of the Tariff Act make it very clear what documents may be sought, under what circumstances they may be sought, and the administrative summons procedures to be used to obtain them.

Second, the language of the Bill expands the authority of other agencies to gain access to these records. Unless a government agency other than Customs has its own authority or judiciai means of obtaining records from private individuals, we do not believe that this Bill should grant tham that authority. Under the language of the Bill as drafted, regulations could require a Broker to turn over records to a

United States Attorney in a criminal or other investigation, records that would not otherwise be obtainable because of Constitutional protections.

Third, this Bill is intended to give *Customs* the authority to oversee the activities of Customs Brokers. Clearly, Customs needs to have access to the Brokers' records relating to customs business in order to fulfill their audit and enforcement obligations. What concerns us is the apparent authority given to persons outside of Customs and a corresponding potential loss of control over the records. If a duly accredited officer or employee of the United States, who is not an employes of the Customs Service, needs records related to a Broker's Customs Business and is legally entitled to them under some other provision of law, those records may be sought through the United States Customs Service by means of existing procedures. Otherwise that government agency should not have access to the records.

CUSTOMS BROKERS' LICENSES, SECTION (b); CUSTOMS BROKERS' PERMITS, SECTION (c)

H.R. 5418 recognizes and implements the concept of a National Customs Brokers License with permits required to conduct Customs Brokerage business within a particular district. Customs has indicated that it is their intention that under the regulations the sole criteria for the permit will be that an office is maintained within the district and that a licensed individual customs broker is employed in that district. The Bill provides that "each person licensed as a customs broker . . . shall be . . . issued a permit, . . . for each customs district in which that person conducts business." It is clear that the permit is required to conduct business, but it is not clear that the issuance of the permit is automatic when these two criteria are met. It is important that the statute, and not just the regulations, make it clear that the issuance of a permit is not a discretionary act.

As we understand, the permit is a control device only, and not an additonal qualification that must be met. If the distinction is not made clear, the national license concept would be effectively negated and restored to an individual district license with subjective quaifications and requirements.

In closing, I would like to reiterate that the J.F.K. Airport Customs Brokers Association supports H.R. 5418 if the changes discussed are adopted. The points which we have raised, we believe, will result in a better, more consistent Bill.

Our thrust and position has been that nothing yields a better law than the standards that are in the Law itself. If past statutes regulating our industry are any indication, this Bill will outlive its framers. Consequently, the standards that will be reflected in regulations and guidelines must clearly discernible from the statute itself. They should not be left to later interpretations of legislative history and old regulations, and to fading memories as mere notions of what was originally intended.

Within one week we will submit to the Committee our proposed amendments reflecting our suggestions.

Thank you very much for your kind attention.

Chairman Gibbons. I want to commend you and Customs for the constructive way in which everyone has worked to try to improve this 54-year-old law and I hope we can improve it. I hope we can reach a consensus on the major items, and I have directed our profesional staff to sit down with you and Customs and try to work out these things so that we can move this ahead as a noncontroversial piece of legislation. I hope we can do that. If we can't, we will probably delay the bill another year because the Congress is jammed up with legislation right now and we are having a hard time getting noncontroversial bills through the process.

I want to get this passed and I directed the staff to sit down with you as soon as possible and review the differences between them and try to mediate those differences and, if we can, move it ahead very rapidly. Obviously this law does need bringing up to date, and that is what I hope to do.

Mr. Frenzel, do you have some questions?

Mr. Frenzel. I want to congratulate all the witnesses and I would ask the first witness: Other than the J.F.K. Association, most brokers in the United States favor the bill as presented?

Mr. St. John. Yes, sir, we have around the country 29 organizations that we represent, and 27 have filed letters, which we will make a part of the record, that they support the bill. They have some concern with penalty provisions but on the whole they want the bill passed as it was issued. They are interested in the bill.

Mr. Frenzel. I might ask the second witness. His statement was that if the J.F.K. proposed amendments that are to be presented are accepted his group would favor the bill. Might I ask that in the absence of those amendments if you would prefer to operate under the current law.

Mr. Soller. That is correct.

Mr. Frenzel. Thank you.

Chairman Gibbons. All right. Thank you, gentlemen, very much and I urge you to be available to work with our staff on this matter.

We will next take up H.R. 5228, which is my bill, along with Mr. Conable, Vander Jagt, and Frenzel, to accelerate reductions. This has been suggested by the administration and we have a panel of witnesses: Mr. Nehmer, representing the Leather Products Coalition, and a number of witnesses from the American Fiber & Textile Coalition. If all of those would please come forward, we would appreciate it. Mr. Nehmer, we will allow you to be the first witness and then we will go to Mr. Chaikin and to the others.

Mr. Nehmer. I would be willing to yield to Mr. Chaikin and the others.

Chairman Gibbons. We have Mr. Chaikin first, and, Mr. Chaikin, we realize you have a number of different associations in the American Fiber & Textile Association. Go right ahead, Mr. Chaikin.

STATEMENTS ON BEHALF OF THE AMERICAN FIBER, TEXTILE, APPAREL COALITION BY SOL C. CHAIKIN, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION; JACOB SHEINKMAN, SECRETARY-TREASURER, AMALGAMATED CLOTHING & TEXTILE WORKERS UNION; CHARLES, CARLISLE, EXECUTIVE VICE PRESIDENT, MAN-MADE FIBER PRODUCERS ASSOCIATION; JAMES H. MARTIN, PRESIDENT, AMERICAN TEXTILE MANUFACTURERS ASSOCIATION; AND STEWART BOSWELL, PRESIDENT, AMERICAN APPAREL MANUFACTURERS ASSOCIATION

Mr. Chaikin. Mr. Chairman and gentlemen, at the outset may I offer my thanks for this opportunity to testify before your committee. As you have indicated, a number of us are here representing a very large and important coalition which has a community of interest particularly as regards the bill under consideration.

I am president of the International Ladies' Garment Workers' Union, and joining me here is Mr. Jack Sheinkman, the secretary-treasurer of the Amalgamated Clothing & Textile Workers Union; Mr. James H. Martin, Jr., president of American Textile Manufacturers Association; Mr. Charles Carlisle of the Man-Made Fiber Producers Association; and Mr. Stewart Boswell of the American Apparel Manufacturers Association. We are appearing on behalf of the 21 members of the American Fiber, Textile, Apparel Coalition, known as AFTAC. This is a group of trade associations and labor unions which make up the domestic fiber textile and apparel industries.

I won't read, in the interest of brevity, the names of each of the cooperating members of the coalition, but they will appear in the record.

Chairman GIBBONS. Yes, sir.

Mr. CHAIKIN. We are here today to testify in opposition to H.R. 5228 which proposes to accelerate the tariff reductions negotiated during the multilateral trade negotiations.

I would like to spend just a few moments to indicate the nature of our concern. The formal presentations, I'm sure, have already been offered to you and undoubtedly will appear in the record.

What this bill suggests is that we accelerate some tariff-cutting in advance of the commitments which were made to the coalition jointly and individually, surely during 1978 and 1979 when the MTN was being negotiated, and the record will show the commitments made by the then administration to the Congress that the staged reductions would be adhered to when indeed there were direct questions asked of them whether that was the intention and commitment and could we rely upon them. The answers were that surely this Congress could rely on it and surely the parties and interests could rely on it.

Well, let me suggest that anything which weakens the position of the domestic industries is to be avoided during this period of time.

Very quickly, while I don't want to go back to the dawn of history, Congressman Gibbons, may I just suggest the following:

Since 1978 and 1979 when we thought that the MTN and the commitments made by the then administration would lead to a more orderly trade in textile apparel and clothing, that surely has not been the case, and it must be common knowledge by now and since you have had an abiding interest in legislation of this kind and have heard me and others testify at one time or another, surely you must know of the great import penetration which has occurred just in the last 4 or 5 years.

And if I may just quote the figures of the last year and a half to indicate how serious is the condition of the domestic textile apparel and clothing industries. In 1983, over the previous period in 1982, there was a 14 percent increase in apparel over 1982 and a 38½-percent increase in textile mill products coming into the country.

Now, all of this in the name of orderly trade. All of this in the name of trying to prevent surges of imports which have deleterious effects on the domestic market. And as if this were not enough to alarm everybody, surely the figures of the first 4 months of 1984 must serve the purpose. So far, in the 4 months, over the comparable 4 months of 1983, there has been a surge of increase of 33 percent in apparel, over 70 percent over the first 4 months of 1983 in textile products. The overall average in 1983 was an increase of 25 percent and in 1984, assuming now that we can analyze the experience of the first 4 months of the year, could very well see a 49-percent increase between textiles and apparel and clothing.

To describe it perhaps in another way but equally as graphically, in 1979, which was at or about the time of the negotiations of the textile white paper of the MTN negotiations, of a series of conversations that took place between the Office of the Special Trade Representatives, Members of Congress and members of the coalition, in 1979, 4.6 billion square yards equivalents of textiles came into the United States. That is the total combination of apparel and textiles and clothing. All measured by square yard equivalents.

In 1983, it zoomed to 7.4 billion square yards equivalents. So far in the first 4 months of 1984, if we were to analyze the experience of the first 4 months we would reasonably expect that there would be 10.4 billion square yards equivalents coming into the country.

Now, I suggest very simply and clearly, Mr. Gibbons, that anything that is done to make it easier, to make it cheaper, for these imports to come into the country will just have an additional harmful effect. The burdens are such that they can hardly be borne now by elements of the domestic industry. Apparel and clothing, a number of product lines are in danger of being tipped over if indeed they have not been already tipped over. Where the import penetration is so large there is no way that the remaining domestic industry can survive.

In the matter of textile mill products, the largest single customer of the domestic textile industry are the apparel clothing industries, and as they go and as they have been going. The danger to the textile industry here in the United States becomes apparent.

I would urge you and the committee to do two things. One, is to effectuate the commitments that were made by the prior administration by the Special Trade Representative, who acted officially at that time, to not accelerate the staged reductions which were then agreed upon; and second, do nothing that would make the burdens which we bear today even greater as we go on into tomorrow.

What the end result will be of this enormous import penetration unless there is massive and meaningful and wise Government interposition, I do not know. These industries employed at one time 2½-million workers. They employ now less than 1¾-million. Just in the last several years, there has been a diminution of about 200,000 jobs. If this continues the drain on our economic strength as you must be aware, will demand of us a price which this community must not pay.

I would like at this time, Chairman Gibbons, to introduce Jacob Sheinkman of the Amalgamated Clothing and Textile Workers Union.

Mr. SHEINKMAN. Thank you, Mr. Chairman.

I will speak second and Mr. Martin will wind up our official presentation. I want to add a few other points to what Mr. Chaikin presented. It is important to bear in mind that when the original MTN was before the House and the Senate, the House and Senate and Congress by overwhelming margins voted to exempt textiles and apparel from any duty cuts. The support that the Congress ultimately gave and we were prepared to give was a result of negotiations of the White Paper which specifically put in the 2-years delay and a phased on basis as a means of compromise. And in this regard, I would like to analogize it in a sense to a collective bargaining agreement, not to be subject to change by whims of time or change of administration.

Confidence in these kinds of agreements is very fundamental in terms of each of us going back to our respective constituents. In our regard there is a question of being able to explain to our members what we feel is the right thing and being able to persuade them to support the right thing in terms of the United States and the various industries that we are involved in.

In terms of the manufacturers it sends other signals. Whether they are to invest money in new plant and equipment in the United States, whether to start thinking of putting their production offshore. No confidence can be built in if we are ending up in situations where legislation varies, particularly when we are dealing with long-term problems of the kind of magnitude we are dealing here.

I would suggest that the administration timing of this proposal is a result of the summit meeting that was held recently in Europe. The problem of the U.S. trade and open trade and the concern of the Congress and the American citizens about protectionism is really what we are dealing with here, which is, if I may use an analogy as a pimple on a pickle.

The reason I say that is the basic problem is our trade deficit and the basic problem is the overvalued dollar. According to Mr. Feldstein at a meeting I attended recently, the facts show that between 1980 and 1984, the value of the dollar has risen 45 percent in real terms vis-a-vis foreign currencies. This means in effect imports now are subsidized to the tune of 45 percent and exports are being penalized to the tune of 45 percent.

Chairman GIBBONS. You are correct.

Mr. SHEINKMAN. The percentage that is going to come about as a result of the proposal that the administration is putting forth at this time is not going to deal with the basic problem of the deficits. This has to be dealt with on a much greater scale and a broader issue involving public policy, general spending policy, and include both the administration and how the Congress feels. To try to deal with the trade issue, to try to deal with that in terms of the climate that is being generated—I just came back from my union's triennial convention and I have been representing and involved with my union now for 31 years. I have never heard so much concern on the part of ordinary working people. They are insecure, they are angry, they feel their existence is being threatened and in our judgment, this is something that is not healthy for the general overall welfare of our Nation.

And I would submit, sir, that when you are dealing with this kind of issue, where you are trying to deal with a much broader problem by taking on this kind of proposed amendment to a bill, what you are doing is really disrupting the orderly process of trade in the long term. And last but not least, in 1986, in July, the multifiber arrangement is to end. We will be sending a signal in terms of this by enacting legislation at this time that will be misread by other nations.

Other trading partners who have had our previous testimony indicated much more favorable terms in the tariff cutting. They have had reductions only, for example to Japan and Canada, of 2.5 percent, Europe 3.5 percent, on average, and the United States 4.5 percent. What we will be saying to this and the other countries of the world is that we are prepared to give away this industry, an industry which not only is reduced in absolute employment, employs large numbers of women who in many cases are single household support, many minority people who can't move into other areas.

And finally let me say this. I recently visited another plant, one of our plants in Portage, PA near Johnstown. In this plant, I happened to see two males working in a job that I ordinarily wouldn't see males in. I went over to them. They were two steelworkers, who had lost their jobs at United States Steel in Johnstown, PA. They had nowhere else to go, but at least they could earn $6 which was one-half of what they were earning before, as opposed to jobs earning the minimum wage.

What we are really doing—as a Wall Street Journal article indicates—is to push down people out of the middle class into the lower class. We are ending up with a two tier society, which in my judgment has untoward consequences for the long-term future and the stability of our Government and our society.

At this point, I would like to turn the microphone over to Mr. Martin.

Mr. MARTIN. Thank you, Mr. Chairman.

I will be very, very brief. My name is James Martin. I am the president of the American Textile Manufacturers Institute and spokeman for the basic textile industry in this country. We furnish, as Mr. Chaikin said, the fabric and the yarns and the sewing thread for apparel and our industry—our trade deficit in our textile and apparel has grown from $4.7 billion to $10.6 billion in the last 4 years.

Simply put, the word protectionism has become a dirty word in our society but I am proud to use it because—let me add to what these gentlemen say—I have been trying very hard for a number of years to protect American jobs and not to protect inefficient industry. We are a very efficient industry from one end to the other. We have spent money very wisely and amply to stay efficient and it really hurts me as a 65-year-old American to have to beg other Americans to protect American jobs. That is what I have been doing for 5 years.

I don't really understand it, but we are protecting jobs of hard working, honest, good people, who really have nowhere else to go. And in that context, please let me use the word protect and protectionism over and over and over again. And thank you very much for letting us come to testify before your committee.

[The prepared statement follows:]

STATEMENT OF THE AMERICAN FIBER, TEXTILE, APPAREL COALITION IN OPPOSITION TO H.R. 5228

The statement is presented on behalf of the 21 members of the American Fiber/Textile Apparel Coalition (AFTAC), a group of trade associations and labor unions which make up the domestic fiber, textile and apparel industries. The members include: Amalgamated Clothing & Textile Workers Union; American Apparel Manufacturers Association; American Textile Manufacturers Institute; American Yarn Spinners Association; Carpet and Rug Institute; Clothing Manufacturers Association of America; Industrial Fabrics Association; International Ladies Garment Workers Union; Knitted Textile Association; Luggage & Leather Goods Manufacturers of America; Man-Made Fiber Producers Association; National Association of Hosiery Manufacturers; National Association of Uniform Manufacturers; National Cotton Council of America; National Knitwear & Sportswear Association; National Knitwear Manufacturers Association; National Wool Growers Association; Neckwear Association of America; Northern Textile Association; Textile Distributors Association; and the Work Glove Manufacturers Association.

The products manufactured by the coalition members include synthetic and natural fibers, yarns, fabrics, manufactured textile products, garments and other products whose chief characteristics are textiles. Most of these products will be negatively impacted by H.R. 5228 which proposes to accelerate the tariff reductions negotiated during the Multilateral Trade Negotiations (MTN). Therefore, the member organizations of AFTAC oppose this legislation.

The American textile/apparel industry has long been recognized as one that is adversely impacted by imports. For that reason the U.S. government has particpated in a number of international agreements providing for orderly trade in textiles and apparel. Also, the U.S. International Trade Commission, prior to the tariff-cutting concessions made during the Multilateral Trade Negotiations examined the probable economic effects of such tariff reductions on textile and apparel products. The result of the ITC investigation was to confirm that in many cases, tariff reductions utilizing the full authority provided in the Trade Act of 1974 would lead to adverse economic effects on the domestic textile and apparel industry and its workers. Nonetheless, many tariff cuts on textiles and apparel were made during the MTN—although in many cases the cuts were less than that called for by the "tariff-cutting formula" used in the negotiations. Many people have argued that the tariff cuts finally agreed to on textiles and apparel were not extremely significant or important because they were not as great in many cases as were the cuts on other manufactured products. We believe that this argument is not correct and a fuller examination is undertaken below since it bears directly on the issues raised by H.R. 5228.

On a trade-weighted basis, the United States' average tariff on textiles and clothing before any MTN cuts was 23.5 percent. After all of the tariff concessions made by the U.S. on these products during the MTN are fully implemented the weighted tariff average will be 19 percent [1] which means that the United States cut its textile and apparel tariffs on average some 4.5 percentage points. This reduction was greater than reductions made by any of our major trading partners. Canada's average trade-weighted reduction on textiles and clothing was 2.5 percentage points; Japan's was 2.5 percentage points and the European Communities average reduction was 3.5 percentage points. Thus, the United States' concessions on textiles and apparel tariffs exceeded those of our trading major partners. Now H.R. 5228 seeks to accelerate those concessions and in return we are told that our major trading partners will probably accelerate their concessions as well. The U.S. textile/apparel industry was the loser in the MTN tariff-cutting exercise and we will be losers in any acceleration of the tariff cuts, for a number of reasons beyond the apparent imbalance of textile apparel concessions that were agreed to during the MTN.

First of all, the domestic textile and apparel industry is in much worse shape today than it was in 1980 when the tariff concessions began to be implemented. In 1980 the textile sector had a favorable balance of trade. Exports amounted to $3.6 billion while imports were $2.7 billion. Today, the reverse is true. In 1983 the textile sector's trade deficit amounted to −$1.1 billion with imports having grown some $784 million to $3.5 billion from 1980. During this period imports of textiles increased 77.2 percent from 2.0 billion square yard equivalents (sye) to 3.5 billion sye in 1983. Exports declined some 44.1 percent in quantity terms over this period. Domestic production of textiles has grown only slightly during these four years and employment has declined from 848,000 workers to 744,000.

The situation is even worse in the apparel sector. Imports of apparel have grown from 2.9 billion sye in 1980 to 3.9 billion in 1983. The trade deficit has worsened from −$5.6 billion to −$9.5/billion and employment has declined from 1,264,000 workers to 1,169,000 workers. Now, with H.R. 5228, the industry is being asked to expose itself further to additional import penetration which can only lead to additional loss of jobs for American workers.

Another compelling reason to oppose this bill is because of its affect on the snapback provision provided in Section 504 of the Trade Agreements Act of 1979. Enactment of H.R. 5228 would lead to a significant loss of negotiating leverage for the United States during the renewal of the Multifiber Arrangement in 1986. The snapback clause states:

"The headnotes to Schedule 3 are amended by adding at the end thereof the following new headnote:

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[1] Based on data from the GATT Secretariat, Geneva, Switzerland.

"8. In the case of each item in this schedule and schedule 7 on which the United States has agreed to reduce the rate of duty, pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 before January 3, 1980, on any cotton, wool or manmade fiber textile product as defined in the Arrangement Regarding International Trade in Textiles, as extended on December 14, 1977 (the Arrangement), if the Arrangement, or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, ceases to be in effect with respect to the United States before the total reduction in the rate of duty for such item under sections 101 and 109 of the Trade Act of 1974 has become effective, then the President shall proclaim the rate of duty in rate column numbered 1 for such item existing on January 1, 1975, to be the rate of duty effective, with respect to articles entered, or withdrawn from warehouse, for consumption, within 30 days after such cessation and until the President proclaims the continuation of such reduction under the next sentence. If subsequently the Arrangement, or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, is in effect with respect to the United States, then the President shall proclaim the continuation of the reduction of such rate of duty pursuant to such trade agreement. For purposes of section 109(c)(2) of the Trade Act of 1974, any time when a rate of duty existing on January 1, 1975, is in effect under this headnote shall be time when part of such reduction is not in effect by reason of legislation of the United States or action thereunder."

This means that any tariff cut negotiated in the MTN which has not yet been fully implemented will snap back to its rate on January 1, 1975 if there is no Multifiber Arrangement or other substitute agreement governing trade in textiles and apparel in effect. When the present Multifiber Arrangement expires in July 1986 nearly all of the tariff rate reductions on textiles and apparel will have been completed if the tariff cuts are accelerated as proposed in H.R. 5228. This means that the U.S. will have forfeited a huge amount of negotiating leverage in renegotiating the Multifiber Arrangement if the provisions of H.R. 5228 are adopted.

Based on the import statistics of the past four years which we have provided above, it is obvious that a new international arrangement is needed which will considerably strengthen the existing arrangement. However, if H.R. 5228 is adopted the U.S. will have given up a tremendous weapon in its arsenal, namely the snapback clause, in obtaining the needed changes in the Multifiber Arrangement.

Another reason that these tariff cuts should not be accelerated is that exchange rate changes which have taken place during the four years since the tariff cuts have begun have eroded much of the protection afforded by tariffs. Because of the strengthening of the dollar during this period, we estimate that on a trade-weighted basis, the exchange rate impact has been essentially to double the price of our exports and to diminish the import prices of textile and apparel by some 40 percent.[2] This administration has pursued fiscal and monetary policies aimed at purposely producing an over-valued dollar in order to increase imports from the developing countries with large foreign debt. Now with H.R. 5228, the Administration is seeking to further reduce the level of protection which this industry was provided by accelerating the MTN tariff reductions.

Finally, we believe that H.R. 5228 violates commitments made by the Administration which concluded the MTN tariff reductions, commitments which that Administration made to the Congress and to the domestic textile and apparel industry. We would like to include in our statement an exchange which took place while the tariff cuts were being explained during the debate on the passage of the Trade Agreements Act of 1979. The Executive Branch through Ambassador Robert Strauss, then the Special Representative for Trade Negotiations, made its commitment unequivocably clear with respect to staging of tariff cuts. In an exchange with Senator Ribicoff on July 10, 1979, Ambassador Strauss stated that the tariff cuts are to be phased in beginning in two years over an eight-year period. Senator Ribicoff asked, and we quote, "Can the garment industry depend on your statement just given that that is the rate of cut that will be involved and put into place?". Ambassador Strauss replied, and again we quote, "Senator, yes. Let me tell you this. Damned near anybody can depend on a statement I make in a record like this before the Senate." This was taken from hearings before the Subcommittee on

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[2] The exchange rate impact on imports is estimated by weighting the exchange rate changes from June 1980 by the quantities of imports from the major suppliers to the U.S. The export impact is obtained the same way using as weights U.S. exports to our major markets and their exchange rate changes.

International Trade, Senate Committee on Finance, July 10th and 11th, 1979. Part I of II parts, page 400. (attached)

Another adverse impact which an acceleration of tariff cuts will have on the government and on the economy will be the reduction in tariff revenue which this acceleration will produce. When all reductions are made, as stated earlier, the average tariff on textiles and apparel on a trade-weighted basis will amount to 19 percent. While it is very difficult to calculate exactly what the tariff revenue loss would be one can estimate its magnitude with, we believe, some reliability. If one assumes that the tariff cuts were made in equal increments over an eight-year period and that the total average trade-weighted tariff cut was 4.5 percent then the average trade-weighted tariff cut each year is 0.64 percent. if one also assumes that textile and apparel imports in 1986 will be $11.6 billion (the value of these imports over the 12 months ending March 1984) then the loss in tariff revenue will amount to about $74 million. This almost certainly underestimates the revenue loss since imports thus far in 1984 are some 49 percent above imports for the same period last year and continued import growth is almost certain given current U.S. trade policies. Nonetheless, let us restate our estimate. We believe that the one-year acceleration in tariff reductions will cost the U.S. Treasury at least $74 million in revenue loss in 1986.

It seems obvious that H.R. 5228 carries too high a price tag. The cost of H.R. 5228 will be lost tariff revenue, lost jobs for U.S. workers, lost leverage in MFA renewal negotiations and the violation of a commitment made by the Executive Branch to the Congress. The benefits can be defined as nothing more than some symbolic gesture against protectionism. This symbolic act carries with it some very real consequences, all of them adverse for the domestic textile and apparel industry. We urge the Subcommittee not to report favorably on H.R. 5228.

Chairman GIBBONS. Fine.

Are there others that wish to be heard?

STATEMENT OF STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES INC., ON BEHALF OF THE LEATHER PRODUCTS COALITION

Mr. NEHMER. Thank you again, Mr. Chairman.

For the record, my name is Stanley Nehmer. I am here on behalf of the Leather Products Coalition, several of whose members are also members of the Fiber, Textile & Apparel Coalition. We are here in opposition to this piece of legislation to provide acceleration of tariff cuts for reasons which we have in our written statement.

I want to add a few additional words to those which I have heard because the reasons are as relevant to leather goods as they are for textile/apparel products. We understand that the AFL-CIO has submitted a written statement to the committee.

Chairman GIBBONS. That is right.

Mr. NEHMER. In opposition to the legislation as well.

Chairman GIBBONS. That is correct.

Mr. NEHMER. Now, Mr. Chairman, I have been involved in the advisory process, the private sector advisory process involving trade negotiations for many years and when we get a commitment from administrations—and there have been a whole series of these over several years, industry and labor have to operate on the basis of commitments that are made. We heard a commitment this morning from Mr. Lighthizer with regard to this particular piece of legislation: There won't be any acceleration of tariff cuts unless these are reciprocated by other countries who have the particular products involved.

We heard a commitment from Ambassador Strauss, then Special Trade Representative in July of 1979, and he was asked by Senator

Ribicoff specifically, "Can industry depend upon your statement, Mr. Ambassador?"

He said, "Senator, let me tell you this, damn near anybody can depend on a statement I make in a record like this before the Senate."

So now having said that, we hear a commitment from Mr. Lighthizer this morning. This administration is going back on a commitment made several years ago by the predecessor of Mr. Brock. What are we going to believe, what are we to believe? We can't operate on this basically. When the commitment is made in the trade policy area by an administration, the succeeding administration must live up to it or else we have some very major problems.

Let me say one more thing. We had a trade deficit last year of $69 billion. Of that, $22 billion was with Japan. Japan is the country that has urged the United States to suggest, as we understand it, this piece of legislation. Japan has quotas on leather products—has had those quotas on leather products—which are inconsistent with GATT. We have taken them to GATT, we have yet to get the Japanese to remove those import quotas.

One-third of the total deficit last year was with Japan and yet we are taking this particular action even while knowing that what they are doing in leather products is not right.

We have in our testimony given you an analysis, as has the AFTAC testimony, of the lost revenue to the United States by 1 year's acceleration. We think that is of some signficance.

Finally, on the question of the snapback of the tariffs that are in section 504 of the 1979 Trade Agreements Act, the Leather Products Coalition is concerned about that as well.

I listened to Ambassador Lighthizer this morning when you asked him this question, which was very important—I am so glad you did ask that—we are just throwing away the leverage, assuming we are going to renew the MFA or some suitable substitute, we are throwing that away by this legislation as far as it affects textile products and I didn't find his answer really that satisfying. He would hope that the President would give consideration to this question of the MFA and its relation to 504 of the 1979 act when he makes decisions to accelerate or not to accelerate tariff cuts.

Who is he kidding? The President of the United States doesn't make those decisions. He is given pieces of paper by the U.S. Trade Representative's office.

We hope you will not report this legislation out. I really don't think it is the right legislation at this time.

That concludes my remarks.

[The prepared statement follows:]

STATEMENT OF STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES INC., ON BEHALF OF LEATHER PRODUCTS COALITION [1]

SUMMARY

As detailed in our attached statement, the Leather Products Coalition is opposed to H.R. 5228, the "Reciprocal Tariff Reduction Acceleration Act of 1984" because:

We consider a reduction in the staging period for the MTN cuts to be a breach of faith with U.S. industry and labor based on Executive Branch commitments made pursuant to the Trade Act of 1974 and the Trade Agreements Act of 1979.

It will have a harmful impact on several leather-related product categories for which duties will be reduced precipitously and will cost $2.6 million in foregone revenues.

The leather-related products sector and the nation as a whole face a trade deficit of such mammoth proportions that we cannot imagine why the Administration would possibly want to stimulate additional imports at this time. Imports of all leather-related products are increasing as never before and currently have import penetration rates ranging from 35 to 85 percent of the U.S. market.

There is a substantial number of products produced by the leather-related industries which are classified as textile products. Such textile products are subject to the Multifiber Arrangement (MFA). The MFA will expire at the end of July 1986. Section 504 of the Trade Agreements Act of 1979 provides for a snapback of tariff rates on apparel and textile products to January 1, 1975 rates if the MFA is not renewed or a suitable successor arrangement is not in place. However, the snapback provision is only operative before the total reduction in the rate of duty for such textile and apparel items has become effective. If H.R. 5228 is enacted, the MFA would expire after most of the staged reductions have been completed. Thus, considerable leverage to secure renewal of the MFA or substitute arrangement would be given up.

The Leather Products Coalition believes this legislation is highly controversial. It is not an innocuous piece of legislation. It also has major revenue implications. Therefore, we hope that the Trade Subcommittee will not favorably report it.

STATEMENT

This statement is presented on behalf of the members of the Leather Products Coalition, a group of trade associations and labor unions in leather-related industries.[2]

The organizations include:

Amalgamated Clothing & Textile Workers Union, AFL-CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO; Luggage & Leather Goods Manufacturers of America, Inc.; United Food & Commercial Workers International Union, AFL-CIO; and Work Glove Manufacturers Association.

The products manufactured by these organizations include nonrubber footwear, luggage, handbags, personal leather goods, work gloves and leather apparel. Many of these products, with the exception of nonrubber footwear and leather apparel whose duties were not cut in the MTN, will be negatively impacted by H.R. 5228, legislation which has been proposed by the Administration "to authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements." We, therefore, oppose H.R. 5228.

According to a February 24, 1984 letter from Ambassador Brock published in the May 17, 1984 Congressional Record, the mechanics of the legislation would work in the following manner:

"On the date of passage in 1984, the President would be able to proclaim the immediate application of the rates scheduled to be effective January 1, 1985. On January 1, 1985, the President would be empowered to proclaim the rates effective January 1, 1986, depending upon whether he determines that appropriate concessions have been made. *On January 1, 1986, the President would again be empowered to proclaim the rates scheduled to be effective on January 1, 1987.*" [Emphasis added.]

We oppose this legislation for several reasons.

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[1] Amalgamated Clothing & Textile Workers Union, AFL-CIO; Footwear Industries of America, Inc.; International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO; Luggage & Leather Goods Manufacturers of America, Inc.; United Food & Commercial Workers International Union, AFL-CIO; and Work Glove Manufacturers Association.

[2] The Footwear Division of the Rubber Manufacturers Association associates itself with the position taken in this statement.

First, we consider a reduction in the staging period for the MTN tariff cuts to be a breach of faith with U.S. industry and labor. Section 109 of the Trade Act of 1974 established clearly the ground rules for the staging of tariff cuts. U.S. industry and labor gave their advice in connection with the MTN negotiations against this background. In the Trade Agreements Act of 1979, Congress modified the staging requirements somewhat in Section 503. But the Executive Branch was clearly on record that the norm was eight staged cuts with some exceptions specified in Section 503. Indeed in the case of textile products, some of which are the products of members of the Leather Products Coalition, Ambassador Robert Strauss, then the Special Representative for Trade Negotiations, made the commitment crystal clear in this exchange with Senator Ribicoff on July 10, 1979:

"Mr. STRAUSS. . . . They are to be phased in, beginning in 2 years over an 8-year period.

"Senator RIBICOFF. Can the garment industry depend on your statement, just given, that that is the rate of cut that will be involved and put into place?

"Mr. STRAUSS. Senator, yes. Let me tell you this. *Damned near anybody can depend on a statement I make in a record like this before the Senate.* (Emphasis added. Hearings before the Subcommittee on International Trade, Senate Committee on Finance, July 10 and 11, 1979. Part 1 of 2 parts. Page 400).

Our second reason for opposing H.R. 5228 is that it will have a harmful impact on several leather-related product categories for which duties will be reduced precipitously and will cost $2.6 million in foregone revenues to the U.S. Government (See Table 1). Let us cite some specific situations.

With respect to work gloves, several categories will be negatively affected by the bill's passage, including some categories for which the acceleration will have a significant impact. Two work glove categories, leather, and leather/fabric combination work gloves (provided for in TSUSA items 705.3510 and 705.3550) are scheduled to have their tariffs cut in one stage effective January 1, 1987. The tariff cut should never have been made in the first place, since it was done without consulting the Industry Sector Advisory Committee on leather products, despite a prior understanding that these products would not be cut. Because the tariff cut was made without this prior consultation, the U.S. Government agreed through Steven Lande, the STR official who negotiated this cut, that reduction would not be made before January 1, 1987, the final year of the staged rate reductions. Thus, the Administration's proposal in H.R. 5228 would, in effect, exacerbate the error already made with respect to these work gloves by hastening a duty reduction that never should have occurred in the first place. The impact of the acceleration of this tariff reduction would be $328,000 in foregone revenues (Customs duties), based on 1983 import levels of $33 million, and assuming a mid-year 1984 enactment of this legislation.

Gloves of rubber or plastic (TSUSA item 705.8600) present a major problem for the work glove industry. Trade in this category is not insignificant. The value of 1983 imports was $5.3 million. This category received the full 60 percent cut during the MTN (Tokyo) round. In 1979, the ad valorem duty rate on gloves in this category was 35 percent. Today it is 21.9 percent and it is scheduled to be phased down to 14 percent effective January 1, 1987. The Administration's proposal would accelerate this process, beginning this year if the legislation is passed, by 2.6–2.7 percentage points per year, over a three-year period; the cumulative impact will be 6.6 percentage points over this time period assuming mid-year 1984 enactment of H.R. 5228, or $349,000 in foregone revenues based on 1983 import levels. This is not an insignificant amount in duties on this import-sensitive work glove category, particularly in light of the fact that work gloves in this category were denied GSP eligibility in 1982 because of import sensitivity.

Certain luggage, flat goods, and handbag categories will also be impacted by an acceleration in the staged reduction. Some 20 TSUSA categories of luggage, flat goods and handbags will be affected. In the case of three TSUSA categories, luggage, flat goods and handbags of textile materials, wholly or in part braid (TSUS items 706.32, 706.33, 706.34), the acceleration would reduce duties on imports by 1.5–1.6 percentage points per year over the next three years. Again, assuming mid-year 1984 enactment of H.R. 5228, the cumulative impact of the duty acceleration will be almost 4 percentage points. The value of imports in these three categories alone in 1983 was $5.6 million.

While these three luggage, handbag and flat goods categories will be impacted substantially under H.R. 5228 (the combined effect being approximately $234,000 in foregone revenues based on 1983 trade), each of the 20 categories affected by the acceleration will have a substantial cumulative impact over the three years they are phased in. In light of current import penetration in these industries (handbags, 85 percent; luggage, 50 percent; flat goods, 35 percent) an acceleration of the phased reductions is simply unacceptable at this time. Furthermore, to the extent imports will be priced lower because of the reduction in duties, domestically-produced goods competitive with imports will also have to be priced lower. Thus, one can conclude that the estimated loss in customs revenues of $2.6 million will be reflected in a comparable loss in revenues to domestic leather products producers.

Our third reason for opposing H.R. 5228 is that the leather-related products sector, and the nation as a whole, face a trade deficit of such mammoth proportions that we cannot imagine why the Administration would possibly want to stimulate additional imports at this time. An irony of H.R. 5228 is that it is in response partly to Japan that the Administration is requesting it—Japan, with which we have a $22 billion trade deficit and which maintains quotas on imports from the U.S. of leather products of our industries. Imports of all leather-related products are increasing as never before and currently have import penetration rates ranging from 35 to 85 percent of our market, even at present duty rates.

Last, but not least, with respect to the substantial number of products of our industries which are classified as textile products, (these leather-related industries produce articles of leather, textiles, and plastics), we have an additional and compelling concern, and that is the effect of H.R. 5228 in relation to the provision in Section 504 of the Trade Agreements Act of 1979, Snapback of Textile Tariff Reductions. The snapback, in effect, provides some insurance for the import sensitive fiber/textile/apparel product sector if it should lose its protection under the Multifiber Arrangement, the international agreement on trade in textiles and apparel. Section 504 of the Trade Agreements Act of 1979 states:

"[I]f the Arrangement [Multifiber Arrangement] or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, ceases to be in effect with respect to the United States *before the total reduction in the rate of duty for such* [textile and apparel] *item. . . has become effective,* then the President shall proclaim the rate of duty in rate column numbered 1 for such item existing on January 1, 1975, to be the rate of duty effective. . . ." (Emphasis added)

The MFA will expire at the end of July 1986 unless renewed. As the current staged rate reduction scheme exists, if the MFA is not extended, the fiber/textile/apparel complex will at least be protected by this provision which snaps back to the January 1, 1975 rate, the rates of duties on textiles and apparel. In effect, if H.R. 5228 is enacted the U.S. Government would be giving up considerable leverage to secure renewal of the Multifiber Arrangement (or a substitute arrangement) because the MFA is set to expire July 31, 1986, after the accelerated staged reduction (for most articles) called for in H.R. 5228 will be completed.

In conclusion, the MTN staged reductions were scheduled to be phased in over an 8-year period for most articles. This schedule was carefully worked out with U.S. industries, with labor and with Congress. For many industries this has been a painful adjustment process. We see absolutely no reason why this process should be accelerated. Indeed, it will prove harmful to several of our industries and many others. We urge the Subcommittee not to report H.R. 5228 favorably.

TABLE 1.—TARIFF AND REVENUE IMPACT OF H.R. 5228 ON CERTAIN WORK GLOVES, LUGGAGE, HANDBAG AND PERSONAL LEATHER GOODS (FLAT GOODS) ITEMS

TSUS item	1983 imports (thousands)	Cumulative reduction in tariff rate[1] (percentage points)	Foregone revenues, mid-1984–86 (thousands)
Work gloves:			
705.3510			
705.3550	$32,800	1.0	$328
705.8300	37,619	.4	151
705.8600	5,294	6.6	349
Luggage, handbags, and flat goods:			
706.04	1,695	.75	13
706.06	5,756	1.0	58
706.09	46,426	.35	162
706.13	51,162	.65	333
706.16	1,513	1.35	20
706.19			
706.21	2,071	2.2	46
706.2930			

TABLE 1.—TARIFF AND REVENUE IMPACT OF H.R. 5228 ON CERTAIN WORK GLOVES, LUGGAGE, HANDBAG AND PERSONAL LEATHER GOODS (FLAT GOODS) ITEMS—Continued

TSUS item	1983 imports (thousands)	Cumulative reduction in tariff rate[1] (percentage points)	Foregone revenues, mid-1984-86 (thousands)
706.2960	6,336	1.0	63
706.32			
706.33	5,923	3.95	234
706.34			
706.3640			
706.3650	26,099	2.45	639
706.3680			
706.4200	1,481	[2] 1.5	
706.4300		1.25	27
706.4400	2,137	3.7	79
706.4500	3,137	3.0	94
706.4500	3,137	3.0	94
706.4700	152	4.05	6
Total			2,602

[1] Assuming mid-year 1984 enactment of H.R. 5228.

[2] 1.5 cents per pound plus.

Source: U.S. Department of Commerce IM 146 and Economic Consulting Services Inc.

Chairman Gibbons. Let's say I want to live up to my commitments and I want our Government to live up to its commitments, and I will be happy to review any of the writings about commitments. I realize those writings, those commitments can't always be in writing and realize the way that Mr. Strauss had to deal, but I do believe that the spirit of it should be lived up to and I will make every effort to find out to my own satisfaction what the letter and spirit of those commitments are.

I urged him to sit down and work with your coalition in order to make sure that you were not treated unfairly. I realize that the people that you represent by and large are some of the underpaid Americans, compared to other Americans—I don't want to call anybody underpaid or overpaid—compared to other Americans, they are not as well paid as people in other industries that are before us seeking to protect their own industry and their own wages.

So, noting the disadvantaged position of the industry and of its workers, and noting the disadvantaged high degree of competition, I urged Mr. Strauss to work with you all on that and to try to work out something, and I will try to live up to that commitment, because I feel that commitment is not only binding on me as an American officeholder, but is certainly binding on me from a moral position of having encouraged him to go ahead and work with you all on that.

I don't know that I have any specific questions to ask you all about this. Certainly I resent as an American the way the Japanese have not responded on these leather matters. It doesn't make sense. I am sometimes afraid that we get an industrial policy like the Japanese, it will make as little sense as it does there, but I appreciate your bringing these to my attention.

Mr. Frenzel.

Mr. Frenzel. I have no questions.

I thank the witnesses for their testimony and hope that they can get progress.

Chairman GIBBONS. Thank you very much.

Mr. CHAIKIN. Thank you.

Chairman GIBBONS. We have a panel of witnesses that are here to speak on H.R. 3159, the Kemper Group, a giant industry group of the U.S. Chamber of Commerce, and the Customs International Bar Association. If they would all come forward, we would appreciate it.

STATEMENT OF JAMES M. GORMAN, VICE PRESIDENT, C.A. SHEA & CO., INC., AND MICHAEL F. DINEEN, DIRECTOR OF FEDERAL RELATIONS, THE KEMPER GROUP

Mr. GORMAN. Mr. Chairman and subcommittee members, my name is James M. Gorman. I am the vice president of C.A. Shea & Co., Inc. I appear here today to present a joint statement on behalf of C.A. Shea and the Kemper Group. Accompanying me here at the witness table today is Michael F. Dineen, who is director of Federal relations for the Kemper organization. Both of our companies have a substantial stake in the U.S. Customs surety bond market. C.A. Shea is a national insurance brokerage firm headquartered in New York City which specializes in writing U.S. Customs bonds in all 50 States. Our principal surety company is American Motorists Insurance Company, one of the principal subsidiaries of the Kemper Group.

We appear here today to supplement the written statement which Kemper filed with the committee at the time of your initial hearing on H.R. 3159 at the close of the first session. We are strongly supportive of this legislation which would provide that increased duties assessed at the time of liquidation or reliquidation of an import are due on such date, and shall incur interest charges if not paid within a specified period.

As you know, this bill would also permit the Government to pay interest in those instances in which a protest of increased duties is found valid. H.R. 3159 would in essence reverse the February 1982 decision of the U.S. Court of Customs and Patent Appeals in the case of *U.S.* v. *Heraeus-Amersil*. In our judgment approval of this legislation is essential in order to restore order to the Customs bond market and to avert the loss of several hundred million dollars in Customs revenues to the Treasury.

In the *Heraeus* decision the court said that an importer could delay payment of increased duties imposed by the Customs Service at the time of liquidation until all administrative protest remedies had been exhausted. This decision has enabled certain importers and sureties to abuse the system by filing frivolous protests simply to delay the payment of all increased duties assessed at the time of liquidation.

Since the *Heraeus* decision any importer or surety can defer or delay payment of any additional items by filing a protest within 90 days from the date Customs states the duties are due. Once a protest has been reviewed and rejected, a process which can take a year or more, the protesting party has another 180 days to make payment to Customs. This in effect amounts to an interest free loan.

The impact of the *Heraeus* decision can be easily summarized:

1. There has been a sustantial constriction in Customs revenues triggered by an increase in the level of frivolous protests filed by certain importers and sureties for what we assume are cash flow reasons. The Customs Service can provide the committee with up to date figures documenting the precise revenue reduction.
2. The Customs Service has been swamped with an enormous amount of paperwork—most of it resulting from frivolous protests.
3. Some surety companies have tightened their underwriting standards to such an extent that regular importers are finding it harder, and in most cases more expensive, to obtain a bond.
4. To the extent that importers are delaying or entirely avoiding legitimate Customs duties, many U.S. companies have lost the protection provided via the system of duties on imported goods.

Within recent weeks we have seen one case which you should find very interesting. An importer secured a Customs bond from us and commenced bringing goods into the country. As Customs began liquidating entries, the importer began filing protests pursuant to the *Heraeus-Amersil* decision. The importer's bond was in the amount of $20,000 and was posted to guarantee the payment of all duties. The importer over a period of a few months protested increased duty bills which when totaled were more than $3 million.

This was not an isolated case. There are thousands of importers and some sureties doing the same thing. It should be noted that an importer can and does in many cases protest bills which in total exceed the amount of the bond posted to assure the payment of those bills. The amount ranges from a few dollars to millions. Nationally, we estimate the amount exceeds hundreds of millions and quite possibly into the billions.

This problem is further exacerbated by the bankruptcy laws. Importers and some sureties who engage in a pattern of protesting know that if their protests exceed the bonds posted with the Customs Service, they can go into bankruptcy which gives them another method by which they can be relieved from the payment of duties. The Government then must absorb these losses not covered by bonds.

Concern about the payment of Customs obligations by importers has led to a situation where that agency has begun engaging in agreements with importers to accept payment of obligations over an extended period of time. These agreements with promissory notes have given new menaing to the *Heraeus* decision.

In one particular note the Customs Service has agreed to allow the importer to defer payment of additional duties and allow the sum due to be paid in 24 equal monthly installments at an interest of 7 percent. In this particular instance, all of the additional duties were covered by a surety bond and the surety, if presented with the bills, would have had an obligation to make immediate payment to the Customs Service.

In affirming the decision in the *Heraeus* case the Court of Customs and Patent Appeals recognized the possibility that certain importers would abuse the protest procedures thereby receiving interest-free loans from the Federal Government, but the court said that it was powerless to address the underlying policy considerations since these are correctly within the purview of the Congress.

There is one suggestion that we should like to make for improving H.R. 3159. In our judgment, interest should not begin to toll until the 45th day following liquidation, as opposed to the 25th day as provided in the bill. As a practical matter, most increased duties are paid within 30 days from liquidation. Extending the period to 45 days would grant sureties 15 days to pursue those importers that had not met their obligation within the normal 30-day billing cycle.

In conclusion, Kemper and C.A. Shea want to urge this subcommittee to act favorably during the current session on H.R. 3159. Enactment of the legislation, is in our view, essential to prevent further abuse of the U.S. Customs duty protest procedures and return order to the surety bond market.

Thank you.

Chairman **Gibbons**. Thank you.

STATEMENT OF STEVEN P. KERSNER, COUNSEL, JOINT INDUSTRY GROUP

Mr. **Kersner**. Mr. Chairman, my name is Steven P. Kersner, a member of the law firm of Stein, Shostak, Shostak & O'Hara, of Washington DC and Los Angeles, CA. My firm has for many years specialized in customs and international trade matters.

I appear before the subcommittee today in opposition to H.R. 3159, on behalf of the Joint Industry Group, a coalition of organizations which is active in the customs and international trade field.

The Joint Industry Group has worked with the subcommittee on numerous customs related issues, including the Customs Procedural Reform and Simplification Act of 1978, and the Customs Valuation Code, and the Trade Agreements Act of 1979. Members of the Joint Industry Group have an ongoing interest in the improvement of the U.S. Customs system and in procedures which encourage the continued growth and expansion of international trade.

The Joint Industry Group opposes the enactment of H.R. 3159, a bill which would authorize the Customs Service to collect interest on duties determined to be due on liquidation or reliquidation, unless payment is received by the Customs Service within 25 days after the date of liquidation or reliquidation. The enactment of this bill would reverse the decisions of the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit—formerly the Court of Customs and Patent Appeals—in the case of *Heraeus-Amersil, Inc.* v. *United States,* 1 U.S. CIT 249, (1984, affirmed in *United States* v. *Heraeus-Amersil, Inc.,* 671 F.2d 1356 (CAFC, 1982). These decisions held that increased duties assessed on liquidation are not due or payable until after the 90-day protest period has expired, or if a protest if filed, 180 days after denial of the protest by the Customs Service.

We urge that H.R. 3159 not be enacted because it would be a hardship to many small businesses and importers in assessing interest on unexpected duty assessments. It is important to emphasize the procedures which are involved herein. When an entry is submitted to the U.S. Customs Service, the Customs collects estimated duties based upon that particular entry.

This bill only addresses subsequent later duty increases. If the Customs Service at the time of entry is collecting the duty that they think appropriate, the importer deposits the duty they think appropriate. The goods are there, then distributed in commerce and not readily retrivable by the importer. Weeks, months, or even years later, the entry is liquidated. At that time the Customs Service may for some reason try to assess the additional duty. We believe that these extra duty assessments which are unexpected at the time of entry provide a hardship on the importers to begin with. This hardship is compounded unduly by attempting to assess interest on these unexpected duty assessments.

We believe that importers have a legitimate right to disagree with these increased duty assessment and they should not be prohibited from attempting to exercise their rights to administrative review by having to pay increased duty with interest.

We heard the gentleman from Kemper and Shea Group make reference to what he considers frivolous protests and other delay tactics done by importers. We think that perhaps before further consideration be given to this bill, there should be additional research an statistical gathering by the Customs Service to see if that is in fact really the case rather than just an allegation.

We also heard the gentleman say that most duties are paid within 30 days, which in fact refutes the entire necessity for this bill. In fact, the only available Customs statistics reveal that close to 90 percent of all Customs increased duty bills are paid within 60 days. So for those reasons, we question the necessity of this bill.

Thank you.

[The prepared statement follows:]

STATEMENT OF THE JOINT INDUSTRY GROUP

Good morning Mr. Chairman. My name is Steven P. Kersner, a member of the law firm of Stein Shostak Shostak & O'Hare, of Washington, D.C. and Los Angeles, California. My firm has for many years specialized in Customs and international trade matters.

I appear before the Subcommittee today in opposition to H.R. 3159, on behalf of the Joint Industry Group, a coalition of organizations which is active in the Customs and international trade field. (Attached hereto as Exhibit A is a list of the organizations which comprise the Joint Industry Group and are in opposition to H.R. 3159.)

The Joint Industry Group has worked with the Subcommittee on numerous customs-related issues, including the Customs Procedural Reform and Simplification Act of 1978, and the Customs Valuation Code, and the Trade Agreements Act of 1979. Members of the Joint Industry Group have an on-going interest in the improvement of the U.S. customs system and in procedures which encourage the continued growth and expansion of international trade.

The Joint Industry Group opposes the enactment of H.R. 3159, a Bill which would authorize the Customs Service to collect interest on duties determined to be due on liquidation or reliquidation, unless payment is received by the Customs Service within 25 days after the date of liquidation or reliquidation. The enactment of this bill would reverse the decisions of the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit (formerly the Court of Customs and Patent Appeals) in the case of *Heraeus-Amersil, Inc.* v. *United States,* 1 U.S. CIT 249, (1981, affirmed in *United States* v. *Heraeus-Amersil, Inc.*, 671 F.2d 1356 (CAFC, 1982). These decisions held that increased duties assessed on liquidation are not due or payable until after the 90-day protest period has expired, or if a protest is filed, 180 days after denial of the protest by the Customs Service.

We urge that H.R. 3159 not be enacted because it would reverse the carefully considered decisions of these courts which permit delayed payment of supplemental customs duties assessed on liquidation of entries.

It is important to emphasize that duties due on liquidation or reliquidation are extra, unexpected duty assessments in addition to estimated duties required to be deposited at the time of entry of imported merchandise. These duties are imposed long after the merchandise has gone to consumption. Further, these extra, unexpected duty assessments should not be subjected to interest payments.

Importers in disagreement with increased duty assessments should be permitted to exercise their rights to administrative review before having to pay increased duties assessed on liquidation. Payment of these assessments could put an importer out of business. Requiring payment of duties billed, which ultimately may be cancelled on administrative review, imposes a severe hardship on importers, especially small business.

Further, duty bills provided by the Customs Service give inadequate information to warrant payment of the amounts being assessed. Information regarding the basis of the assessment must first be obtained from examination of the official entry papers on file with Customs at the specific port of entry. H.R. 3159 provides that duty must be paid within 25 days after the date of liquidation. This 25-day period is totally inadequate. It does not allow enough time for receipt of the bill by the importer, ascertainment of the basis of the bill, and transmittal of the payment of duties. This is particularly true when importers are not residents of the specific port of entry which is involved.

We also object to the retroactive feature in Section 1 of H.R. 3159 because it is inconsistent with the prospective effective date of Section 2. This inconsistency would authorize payment of interest on refunds, but only on refunds of increased duties assessed on liquidation or reliquidation.

We also object to enactment of this Bill because the interest rates which the Government will be paying on refunds of duties collecting on extra duties, are completely out of line with commercial interest rates. These interest rates (20% January through June 1983; 16% July through December 1983; 11% in 1984, compounded daily) would impose severe hardship on importers, and the hardship is not offset by paying interest on refunds. We also object, as taxpayers, to the Government making interest payments on refunds which are totally out of line with commercial interest rates.

Finally, before this Bill should be adopted more adequate statistics should be provided by the Customs Service regarding the number of increased duty bills per year, the number of protests filed, the protests allowed, and the time within which increased duties were paid, on an annual basis, so that a more meaningful analysis can be made of the need for this legislation.

The Joint Industry Group greatly appreciates the opportunity to appear before the Subcommittee and hopes that the concerns expressed herein will be useful and will receive careful consideration of the Subcommittee and its staff.

MEMBERS OF JOINT INDUSTRY GROUP

Air Transport Association of America; American Electronics Association; American Association of Exporters and Importers; American Retail Federation; American Paper Institute; Chamber of Commerce of the United States; Cigar Association of America; Computer and Business Equipment Manufacturers Association; Council of American Flag Ship Operators; Electronics Industries Association; Foreign Trade Association of Southern California; Imported Hardwood Products Association; International Commerce Committee, Los Angeles Area Chamber of Commerce; Motor Vehicle Manufacturers Association; National Association of Photo Manufacturers; National Committee on International Trade Documentation; The Scientific Apparatus Makers Association; and U.S. Council for International Business.

STATEMENT OF RICHARD C. KING, MEMBER, ADMINISTRATIVE PRACTICE COMMITTEE, CUSTOMS & INTERNATIONAL TRADE BAR ASSOCIATION

Mr. KING. My name is Richard King and I am here as a member of the Administrative Practice Committee of the Customs & International Trade Bar Association of New York City.

The association is a national bar association whose members practice throughout the United States primarily in the area of Customs and international trade law. Our members represent clients before the U.S. Customs Service as well as before the courts and allegations dealing with that trade.

We welcome the opportunity to express our views today on H.R. 3159, the bill entitled a bill to require that Customs duties determined to be due upon liquidation or reliquidation due upon that date and for other purposes.

The second one relates to the time when the duties are to be due and payable, and section 2 relates to the payment of interest by the Government on moneys which are paid as increased duties, and which are then subsequently refunded under any one of a number of procedures either administratively or in the court.

Mr. Kersner, I believe, has a ceiling through the entry and liquidation process, so I won't duplicate that but I think to repeat a statement that he made, most imports are by established companies, import the same or similar products year after year, the merchandise is entered the same way, normally liquidated the same way, no bills resulting.

But sometimes there is a new product, sometimes there are new facts, sometimes there are new customers, personnel who may differ in their opinions as to what other people have done or a change in the law, and therefore, liquidation may occur with an increase.

The proposed amendment was prompted by the decision of the U.S. Court of Customs and Patent Appeals affirming the Court of International Trade decision in the case of Heraeus-Amersil. I am familiar with this decision. I litigated the case both below and defended the decision on appeal. Under it, increased duties which were determined on liquidation to be due, were held not to be due and payable until either the 90-day protest period—time within which party for administrative review could be filed or if one was filed, until that protest had been denied and the time for filing summons in the Court of International Trade had expired.

It is required that if a summons is filed that duties be paid prior to that filing so that takes care of that. If the protest were approved, there would not have to be any duties paid so that takes care of that. The only thing we are really concerned with is the case where the importer disagrees, files a protest, and Customs continued to disagree through the administrative level.

This is not a bill to correct an oversight in the law to realign an anomaly that has occurred, it is to reverse the action of Congress in 1930 when they determined contrary to the state of law prior to that time that increased duties should not be paid pending administrative review of the importer's claim. Prior to the 1930 Tariff Act, the importer had to pay his duties before he could file a protest. Congress determined it is unreasonable to determine that the man put up the money. He may well have a legitimate claim and have this money tied up while the protest is pending.

The bill as presently drafted provides for the payment of such increases within 25 days. We believe this is unreasonable for a number of reasons. Twenty-five days is a very short period of time for payment of any bills. Any businessman I am sure most likely takes the full 30 days if not longer. In this situation, with regard to Customs increased duties, it disregards certain factors which exist currently. The entries on which these increased duties are based are commonly not available immediately after liquidation. In New York they are currently being made available, and again, this is not all entries, some 30 weeks after liquidation.

Bills may not be received, may not be mailed promptly. If they are received, often in a large corporation they have to go through many levels before they can be verified, approved for payment. There may be legitimate disputes as to the correctness of the amounts.

There are mistakes. A client very recently in Boston misplaced a decimal resulting in a bill for $120,000 instead of $1,200 and Customs took the position you have to pay that. The Assistant Regional Commissioner of Finance on the stand said if there was a mistake and the bill was issued for $10,000 instead of $100, he would make every effort to collect the bill. We don't think that is reasonable. If you ran a company and you received a bill from a supplier that was out of line from a bill you had received earlier from the same service, I am sure you would have questions and I doubt you would tell your controller to go ahead and pay until you got some answers. Currently, it is very hard to get those answers from Customs within anywhere near 25 days.

Now, the bar position is summarized in our written statement. I won't go into it in any too much detail. We take a position on section 1(a) which would make increased duties upon liquidation or reliquidation. We propose that such duties should be not paid until administrative review of the claim that they are incorrect has been conducted.

Second, we make a recommendation that the bill be amended to make it clear if interest is assessed as proposed that any amount of assessed interest as a result of late payment of increased duties should be included in the amount refunded if the underlying claim is approved. The legislation does not make that clear.

Third, we are opposed to the retroactive effect proposed in section 1(b) and propose an alternative. If enacted it should apply with respect to entries made on or after the effective date. This is common in tariff law, as Mr. Kersner has said, the trade is such that importers have to make provisions a long time in advance. They sell their goods, it is very difficult to go back after the fact and resurrect these things.

The fourth point, we proposed that if payment of interest, if the law is enacted, payment of interest is provided, that that provision for interest should also apply to excess duties deposited on entry. If there are increases it is very clear that the amount is issue, but entry the amount is often issue because of Customs procedure, Customs would require that the merchandise be entered a certain way, require that duties far in excess of what importers believe are reasonable should be deposited. And under your provision you would not allow the importer interest on those amounts which may be tied up for 3 or 4 years before Customs liquidates the entry.

In summary, our position is the importer has a statutory right to administrative review. He should be given the opportunity to exhaust that review before he is required to pay increased duties.

Once the protest is filed, which has to be within 90 days currently, and is often done much sooner, any delays are totally within the control of Customs. If they take 2 years to act on a protest that is not within the control of the importer. He can request accelerated disposition. What this does is automatically result in denial of his protest, so he is similarly denied administrative review.

We would assume that if the Court of Customs eventually concludes that the importer's intended to refund the interest on the late payment, it would also be refunded again. We think this should be pointed out in the bill.

Based on my personal experience and on logic, most protests do not involve increased duties. The numbers that we have seen from Customs on protests contained in our written statement for 1981, as compared to 1982, indicate an increase of protests on a tenth of a percent of the entries liquidated. That is not all though, it represents approximately 12 percent increase in the number of protests filed. There was an increased number filed during the same period.

There does not appear to be a flood of protests utilized by importers or sureties to avoid the payment of increased duties. We just don't think that the concerns raised by the Customs Service are valid. There has not been a substantial increase in the number of protests filed. Customs cannot tell us what the number of those protests are approved as compared to denied.

There should be no hampering of Customs' ability to respond to protests. As we said, there has not been this flood that they would raise fears of and there is certainly no increased number of actions in the Court of International Trade filed as a result of it, because by the time those actions are filed the increased duties have to be paid in any event. It does not make any sense to stall payments of duties by frivolous protests and then pay the money to file a summons, secure the services of a lawyer to proceed in that court on something which has no basis. The only cases which will go to court are those which are legitimate claims on which the importer and Customs still digress after the filing of a protest.

So for that reason, we oppose the provision that these increased duties be required to be paid prior to full exhaustion of the administrative remedies, as Congress had enacted in 1930.

Thank you.

[The prepared statement follows:]

STATEMENT OF RICHARD C. KING, MEMBER, ADMINISTRATIVE PRACTICE COMMITTEE, THE CUSTOMS & INTERNATIONAL TRADE BAR ASSOCIATION

INTRODUCTION

This statement is presented on behalf of the Customs and International Trade Bar Association (CITBA), a national bar association whose members practice throughout the United States primarily in the area of customs and international trade law. Our members represent clients before the United States Customs Service, both in Washington and at ports throughout the United States, the Department of Commerce, the International Trade Commission, the United States Court of International Trade, and the United States Court of Appeals for the Federal Circuit. One of our common interests is the fair and effective administration of the laws related to importing and exporting. The Association was organized in 1919 as the "Association of the Customs Bar." In 1981, its name was changed to the Customs and International Trade Bar Association, following the change in name of the United States Customs Court to the United States Court of International Trade and consistent with the evolution of the practice of its members from the relatively narrow scope of U.S. customs matters to the broader range of issues related to international trade. We welcome the opportunity to express our views on H.R. 3159.

SUMMARY OF H.R. 3159

H.R. 3159, entitled "A Bill to require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes," may be broken into two sections. Section 1 relates to the time when duties are to be due and payable, and Section 2 relates to the payment of interest by the Government on monies which are paid as increased duties and subsequently refunded. Specifically, under Section 1(a), Section 505 of the Tariff Act of 1930 (19 U.S.C. § 1505) would be amended by adding a new subsection (c) which would provide that duties determined to be due upon liquidation or reliquidation shall be due on the date of that liquidation or reliquidation, and if payment is not received by Customs within 25 days after that date, payment shall be considered delinquent and the importer will be assessed interest from the date of liquidation or reliquidation. Under Section 1(b), the amendment is to take effect on the 30th day after the date of enactment, but, for purposes of applying the amendment with respect to liquidations and reliquidations made before such 30th day, and with respect to which the duties due thereon have not been paid, the liquidation and reliquidations shall be deemed to have been made on such 30th day. Thus, if an entry has been liquidated or reliquidated prior to the effective date of the law, and duties have not been paid, the duties would be due on the effective date of the law, and if not paid within 25 days thereof would be subject to the assessment of interest.

Under Section 2(a), Section 520 of the Tariff Act of 1930 (19 U.S.C. § 1520) would be amended by adding a new subsection (d) which would provide that if an entry is reliquidated pursuant to a protest, or an application for relief under section 520(c)(1) or by court order, interest shall be paid on any amount which has been paid as increased or additional duties under section 505(c). The interest rate shall be calculated from the date of payment of the increase, and the rate will be the same as the rate of interest determined applicable to late payments under section 505(c) and in effect at the time of liquidation or reliquidation of the entry in question.

The proposed amendment was prompted by the decision of the United States Court of Customs and Patent Appeals (now the United States Court of Appeals for the Federal Circuit) upholding a decision of the Court of International Trade in the case of United States v. Heraeus-Amersil, Inc. Under that decision, increased duties which were determined on liquidation were held not to be due and payable until either (1) the 90-day protest period provided for in 19 U.S.C. § 1514(c)(2) has expired without the filing of a protest, or (2) if a protest has been filed and denied, when the time to appeal to the Court of International Trade under 28 U.S.C. § 1581(a) has expired.

SUMMARY OF POSITION

The CITBA position is summarized as follows:

1. We oppose Section 1(a) which would make increased duties due upon liquidation or reliquidation. We propose, as an alternative, that duties should not be due until after customs has rendered a final decision on a protest, or the protest period has expired.
2. We recommend that it be made clear that any amount assessed as interest as a result of late payment of increased duties is to be included in any amount returned to the importer if duties are eventually refunded.
3. We oppose the retroactive effect provided for in Section 1(b) and propose that the law should apply with respect to entries made on or after the effective date.
4. We support Section 2(a) which provides for the payment of interest on any repayment of increased duties. We propose, also, that interest should be paid on refunds of duty deposits.
5. The concerns raised by the Customs Service as a result of the Heraeus decision will be eliminated under the CITBA proposal.

The changes proposed in paragraphs 1, 3 and 4, above, appear in brackets in a copy of H.R. 3159 which is attached hereto as Appendix 1. The language to be removed has been lined out. The proposal covered by paragraph 2, above, has been added as Section 3 to H.R. 3159.

BASIS OF POSITION

1. **The importer has a statutory right to administrative review and should be given an opportunity to exhaust the administrative process before being required to pay increased duties.**

At the time that merchandise is entered into the United States, the District Director has the discretion to determine the appropriate amount of duties to be deposited. (See, 19 U.S.C. § 1505(a); 19 C.F.R. 141.103.) If the importer disagrees with the deposit required by Customs, he must nevertheless deposit the estimated duties or his goods will not be released. While the primary issue which is the subject of the proposed legislation does not relate directly to the duties deposited at entry, but rather to duty increases found to be due when the entry is liquidated or reliquidated, it is important to note that it is Customs, and not the importer, that controls the initial deposit of estimated duties.

Having deposited duties which were considered sufficient at the time of entry, the importer is ultimately sent a "liquidation notice" which reflects the final computation and ascertainment of duties by the Customs Service with respect to the particular entry. The decision of the customs officer is final and conclusive unless a protest is filed or unless a civil action contesting the denial of a protest is commenced in the United States Court of International Trade (19 U.S.C. § 1514(a)). If a protest is not filed, the decision becomes final 90 days after liquidation.[1] However, if a valid protest is filed, the "finality" of liquidation is suspended and the importer is given the opportunity to present matters of fact and law to support a reversal of the original customs decision. During the same 90-day period, Customs can sua sponte reverse itself and reliquidate the entry at a higher rate or value and demand additional duties or reach a lower rate or value and refund any excessive duties. This procedure obviously recognizes the value of administrative review, intended for the benefit of both Customs and the importer. It also recognizes the possibility that a decision originally made by the customs officer will be reversed. It is inconsistent with this procedure to require payment of increased duties during the period within which the customs decision may be challenged and the original decision reversed. Stated otherwise, the suspension of finality should also suspend the obligation to pay until action is taken upon the protest, or the period to protest expires.

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1. In the case of a clerical error, mistake of fact or other inadvertance not amounting to an error in the construction of law, a challenge may be raised up to one year

a) Review of the protest. The customs officer enjoys a presumption of correctness with respect to the decision which he has made and the burden is on the protesting party (generally the importer of record) to establish that Customs' decision is incorrect and that the claimed position is correct. (See, e.g., United States v. Perez, 464 F. 2d 1043, 59 CCPA 190 (1972).)

A brief summary of the procedure involving the filing and reviewing of a protest is appropriate. The protest itself is a rather simple document, wherein the importer briefly describes the decision being protested, the claim of the protesting party, and the factual and legal arguments in support of the protest. As long as the protest contains these elements, no rigid form need be followed.[2] Generally, the protest is delivered to the Protest Section in the customhouse and then to the import specialist for his review and decision. In effect, the import specialist who made the original decision which resulted in the increased duties now has the opportunity to review that decision in light of additional facts and/or law provided by the importer. Since each import specialist handles only certain lines of merchandise, and since the protest is directed to the import specialist who made the decision which is being challenged, it is fair to say that the import specialist generally is familiar with the merchandise, the legal issues involved, and the facts in the particular case. The burden is not on the import specialist to justify his original decision. Rather, as noted earlier, his decision is presumptively correct and must be overcome by the importer's evidence.

The protest may address any number of factors. Frequently, the original decision of the import specialist may have been based on an incomplete set of facts. For example, the import specialist may not have had adequate information on the component material of an article, or its specifications, or its intended use, or the

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(cont.)
after liquidation (19 U.S.C. § 1520(c)(1)).

[2] A representative standard form (Customs Form 19) available from the Customs Service is attached to this statement as Appendix 2.

purpose of a certain feature of the merchandise, all of which can affect its tariff classification. Or, information as to the pricing of the article may have been needed, thus affecting its dutiable value. In other cases, a ruling of which the import specialist was unaware may be brought to his attention. Such cases are relatively simple to resolve and, when the facts are fully explained, the protest may be granted. Sometimes a case will involve a close question which requires a detailed explanation of the facts and law, with discussion of appropriate administrative and judicial authorities. Such protests are generally supported by a detailed memorandum filed by the importer or his counsel.

In reviewing the case, the import specialist will review any data submitted in support of the importer's claim. If the importer submits nothing more than a legal conclusion without supporting facts and/or law, he cannot expect the import specialist to look beyond the four corners of the protest and to receive more than perfunctory review and denial.[3] Such action would be consistent with the proposition that the burden rests on the importer to justify the correctness of his position.

b) Possible delays in the protest procedure. Once the protest and any supporting memoranda are filed, the matter is out of the hands of the importer and within the sole jurisdiction of the Customs Service. If delays occur with respect to the review of the protest, the importer should not be responsible since he cannot control the delay. It is not uncommon to encounter rather significant delays in the review of protests within the Customs Service, and we submit that these delays could be reduced if a conscious effort were made to do so. When the protest is filed, it is held by the protest section until the expiration of the full 90-day period. Thus, if a protest is filed 30 days after liquidation, it will remain in the protest section at least another 60 days before being directed to the import specialist. It is our understanding that the reason for so holding the protests is so that if the protest is amended during this period, the amendment can be combined with the initial protest. (It is also our understanding that very few protests are amended after filing.) At the expiration of the 90 days, the protest and the related entry documents are forwarded to the import specialist. This is a clerical task. When the import specialist receives the document, he must review the points of fact and law raised by the importer and render his decision. The decision is not in the form of a letter to the importer, but rather a copy of the protest is returned with the "Customs Decision on Protest" indicated by a check mark in one of the four boxes in section 14A of the protest. (See Appendix 2) Thus, if the import specialist does not receive the information required, he merely has to check the box indicating the protest has been denied. It is difficult to see why there should be any significant time expended in this decision process. The import specialist is, assumably, acquainted with the law and facts related to the issue in question. He must be given specific facts and law by the importer in support of his claim. If he does not receive those facts and law, he will deny the claim. Once a claim has been granted or denied with respect to one protest, all other protests covering the same issue can be summarily granted or denied by a clerical member of the import specialist's team. If there are delays in this process, the importer should not be made to suffer by the requirement to pay the increased duties pending Customs' decision on the protest.

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[3] When an issue is raised which covers several entries of the same merchandise, liquidated on various dates, one protest generally will be supported by the detailed factual and legal discussion with the subsequent protest merely referring to or incorporating by reference the detailed presentation. The import specialist reserves judgment on these protests until he has reviewed the detailed arguments, and then grants or denies all protests accordingly.

At first glance, one might suggest that an importer is not disadvantaged if he is required to pay prior to a decision on the protest in view of the fact that he is able to receive interest on the money from the date of payment. This suggestion is troublesome for two reasons. First, it seems to be inconsistent with the general "exhaustion of remedies" principle under which a party must pursue his administrative relief prior to commencing court action. Certain administrative machinery has been put in place so that an importer can suspend the finality of the administrative decision and legitimately challenge the customs action, and if the decision is thereby rendered "not final," there should be no obligation to pay until a final administrative decision is rendered. Even more critical, however, is the possible injury to an importing company who is precipitously faced with unexpectedly high duty bills, particularly when it had no reason to anticipate the increased duties. Generally, a company anticipates its duty liability at the time of entry based on its knowledge of the product and the estimated duties required with the entry and prices the merchandise accordingly. The later assessment of a substantial duty increase on a small company that did not expect the increase can cause financial hardship and may threaten the company's very existence. While we recognize that an importer must ultimately pay the duty liabilities which it owes, we suggest that in view of the administrative machinery available by the protest procedure, the importer should be given the opportunity to present his case and, as frequently happens, satisfy Customs that the original entry was correct and that duties are not owing.

Our proposal would give the importer the full opportunity for administrative review. If, at the end of that review, the protest is denied, the importer would have to pay within 30 days of denial. This proposal would, on the one hand, remove the need to pay before the administrative remedies were exhausted, but would prevent the importer from withholding payment during the period running from 30 days after denial until the action is filed in court (which can presently be done under the Heraeus decision). In effect, the 180-day "free" period which the importer presently enjoys under the Heraeus decision, running from the date of denial of the protest to the date of filing of the summons, would be shrunk to a mere 30 days. We suggest that this proposal is fair to the importer and fair to the Customs Service. Any extensive delay between the time that the protest is filed and the time that it is decided and, for the sake of discussion, denied, would be delay resulting from Customs' action and outside of the control of the importer. It is unreasonable to penalize the importer for this delay. The solution to such delays should not be sought by requiring the importer to pay the increased duties sooner; the solution should be sought through improved procedures within the Customs Service, and specifically in expediting the handling of protests, which would remove the cause of this delay.

2. If interest is assessed against the importer because the payment of increased duties is late, the interest as well as the increase should be refunded if the importer prevails on the protest or by judicial decision.

We would assume that if Customs or the Court eventually concludes that the importer is entitled to a refund of the increased duties, a refund of interest assessed for late payment of the increase also would be refunded. However, this is not clear from the proposed bill and should be addressed. An amendment of 19 U.S.C. § 1515(a), which is directed to refunds, would make it clear that any amount paid as interest for the late payment of duties would also be refunded with the duties which are refunded.

3. The law should not be applied retroactively.

Under section 1(b), the proposed amendment would become effective 30 days after the date of enactment. Entries which had been liquidated before the effective date, but as to which duties are unpaid on that date, will be deemed to have been liquidated on the effective date. This provision is difficult to justify. In effect, importers who have received duty increases for entries liquidated since April 1981, and who have been legitimately seeking administrative relief and have deferred payment in accordance with the law enunciated by the Customs Court, will now have to pay over two and a half years of duty bills on a single day. Some companies, of course, will have the cash to make these payments, but as to many others, the obligation to produce such substantial sums of cash will be burdensome, if not impossible. One might suggest that such importers would eventually have to produce the same amount of cash under the present law or even under the CITBA proposal. The difference, however, is that neither the present law nor the CITBA proposal will require payment for all the entries on one date. Under the present law, duties must be paid by the time a summons is filed to commence an action in the Court of International Trade. The summonses are tied to protests which have been denied on various dates. Thus, summonses are staggered and payment of increases are staggered. The same effect is produced by the CITBA proposal; entries are covered by different protests which would be denied on different dates. Payments of increased duties would thus be staggered. Under the proposed bill, the burden of requiring payment of bills on a single date when they have accumulated over a period of two and a half years or more would create chaos for a large portion of the importing community. No legitimate reason supports such a proposal and, therefore, any bill which may be passed on this subject should not be applied retroactively. It should apply only to entries made, or withdrawn from warehouse, for consumption on or after its effective date. Such language is routine in legislation directed to imports.

4. Payment of interest on duty increases which are subsequently refunded is fair.

Whether increased duties are paid 25 days after liquidation, as under the proposed bill, or following denial of a protest, as under the CITBA proposal, the Customs Service will have the benefit of the payment and the importer will be deprived of the money until the customs decision is overturned. A decision overturning the assessment would indicate, in effect, that the Customs Service never was entitled to the money. It is appropriate in such circumstances to return the increase with interest.

As indicated earlier, the District Director at each port has the discretion to determine the duties to be deposited at entry. If the deposit is eventually found to be excessive upon the filing of a protest, a refund is forthcoming. It would be appropriate to include interest on such refund since the importer was deprived the use of the money during the period that it was held by Customs.

5. **The concerns raised by the Customs Service will be eliminated under the CITBA proposal.**

In discussing this subject with the Customs Service, we have learned that Customs has several concerns as a result of the Heraeus decision which it seeks to correct by the proposed legislation. We suggest that the CITBA proposal, coupled with a realistic and reasonable effort by the Customs Service in handling protests, should eliminate Customs' apprehensions without imposing undue burdens on importers.

a) Substantial increase in the number of protests filed. It has been suggested that Heraeus will be a vehicle for importers to improve their cash flow by enabling them to withhold the payment of duties during the initial 90-day protest period, plus the period during which the protest is pending, plus the 180-day period following denial and prior to the time within which a court action must be filed. Customs has indicated that, in effect, it is good business practice for an importer to protest every entry and that this has led to the filing of frivolous protests.[4] For purposes of this discussion, we should consider three separate time periods:

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[4] Preliminarily, we must question the fundamental premise that a significant number of "frivolous" protests have been filed since the decision in Heraeus Amersil. The case was decided by the United States Customs Court in April 1981. Therefore, it would be expected, according to Customs' premise, that there have been a significant number of meritless protests filed since that date. According to figures supplied by the United States Customs Service in a letter dated October 25, 1983 to the Chairman of CITBA's Administrative Practice Committee (ADM-3-CO:T:D:EHG), protests for fiscal year 1980 amounted to 35,830, while protests filed in 1982 amounted to 40,102. During the same two periods, the number of entries liquidated increased from 4,635,974 for FY 1980 to 4,894,427 for FY 1982. In effect, .07% of the entries which were liquidated in FY 1980 were protested, and .08% of the entries liquidated in 1982 were protested. This relatively small increase is hardly dramatic. In addition, Customs indicated in the same letter that they do not maintain statistics to show the number of protests granted and denied. Thus, we cannot tell whether the increased protests were ever denied, much less whether they were frivolous. We must question, therefore, the basis for the suggestion that there has been and will be a dramatic increase in the number of frivolous protests.

1) the first 90 days

2) the indefinite period during which the protest remains within Customs' jurisdiction

3) the 180-day period following denial

With respect to the first 90-day period, the statute recognizes that this is a reasonable period within which the importer should be able to develop and present information which would be a basis for Customs to review and reverse its decision. The initial decision is not final during this period. We question the procedure presently followed by the Customs Service to retain all protests in the Protest Section of the customhouse during the initial 90-day period on the likelihood that an importer may seek to amend the protest. In our experience, amendments rarely occur. Thus, if an importer protests an entry prior to the expiration of the 90-day period, i.e., on the 60th day, the protest should be routed to the import specialist at least for preliminary consideration. There is no need for Customs to delay review until the expiration of the initial 90-day period.[5]

With respect to the second period, i.e. after the importer has filed his protest and before the customs officer has ruled thereon, Customs has control over the extent of any delay. If the Customs Service seeks to reduce the attractiveness to an importer of filing protests merely in order to receive cash flow benefits during this period, it should act more promptly on the protests which have been filed. It is likely that the importer gets more "benefit" out of the delay during this stage of the proceeding than out of the initial 90-day period. As explained earlier, the importer has the burden

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5. Another reason for awaiting the expiration of the 90-day period may be the concern that a broker or surety may file a protest against the same entry. This possibility should not prevent the Service from at least sending the importer's protest to the import specialist for his initial review. If the surety or broker does file a protest, the import specialist can consolidate it with the importer's protest. If there is not a second protest filed by the end of the 90-day period, the import specialist can finalize his decision on the protest which he has reviewed. We would expect that multiple parties file a protest against an entry in only a relatively few number of cases.

to establish his claim and the import specialist has the expertise to evaluate the evidence and to distinguish the legitimate from the frivolous protest. If the protests are promptly referred to and reviewed by the import specialist, and those which are clearly meritless are denied, importers seeking to file frivolous protests will quickly learn that there is no particular benefit obtained by filing such protests. In effect, Customs can effectively remove any incentive to file frivolous protests by making it clear that these protests will be promptly reviewed, detected and denied. The importer who has a serious protest, supported by appropriate legal and factual documentation, will not be prejudiced.

The third "free" period, i.e. the 180 days between the denial of the protest and the obligation to file in court, will be reduced to a mere 30 days. Thus, rather than having 180 days from denial of protest to pay under our proposal, any party who has protested and received an adverse decision will have to pay within 30 days or incur interest.

b. Hampering the ability of Customs to respond to protests. As noted above, if the initial "waiting period" within the Customs Service is minimized, the Customs Service diligently addresses protests as received, and the 180-day period is reduced to 30 days, there is every likelihood that there will be no attraction to filing protests merely to have the use of the duty increase money during this period. Thus, it is fair to assume that there will not be any significant growth in the number of protests filed. Customs will be able to review the protests, and dismiss those which are without merit without being hampered in its ability to fully consider a supportable protest. There should be no likelihood that legitimate protests will not be properly reviewed within the two-year period provided for in 19 U.S.C. § 1515(a).

c. Increased numbers of actions in the Court of International Trade. Since the legitimate protests will be able to be fully reviewed and will not be summarily dismissed at the administrative level, protests which have been properly supported at the administrative level will be granted, and there will be no need to commence an action in the Court of International Trade. Thus, there will not be an increase in cases before the Court.

d. Impact upon the collection of customs duties. Since our proposal removes any incentive to file the "frivolous" protests, the volume of protests is not likely to be significantly greater than in the past. Concededly, the increased duties on entries not protested which would be collectable 25 days after liquidation under the proposed law will not be collectable for 90 days under our proposal, i.e. at the end of the 90-day period within which to file a protest. With respect to entries which are protested, the extent to which the delays occur beyond the 90-day period are under the control of the Customs Service and not the importer. While our proposal will result in a greater extension of the collection period than would exist under the proposed law, it will be substantially less than the period for collection under the Heraeus decision. We suggest that this will not have any significant impact on the ability of Customs to collect revenues or on the amount of revenues collected.

In effect, the concerns registered by Customs are based in large part on the apprehension that under the Heraeus decision the number of protests will continue to grow and Customs will be substantially delayed in responding to them. As indicated, under the CITBA proposal, the number of protests will not grow and Customs will have ample time to review the legitimate protests. To suggest that Customs will become mired in protests, and that the solution is to require the importer to pay increased duties long before he has exhausted his administrative remedies, is to fail to place responsibility where it properly should be placed.

We appreciate having the opportunity to provide our views on this important legislation. If there are any questions concerning our position, we will make ourselves available to confer with subcommittee staff members and provide whatever additional information may be helpful.

APPENDIX 1

98TH CONGRESS
1ST SESSION

H. R. 3159

To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1983

Mr. GIBBONS (by request) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To require that customs duties determined to be due upon a liquidation or reliquidation are due [after a protest has been filed and denied, or after the time to file a protest has expired,] ~~upon that date,~~ and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That (a) section 505 of the Tariff Act of 1930 (19 U.S.C. 1505) is amended by adding at the end thereof the following new subsection:

"(c) Duties determined to be due upon liquidation or reliquidation shall be due on the date [that a protest filed against the entry covered by the liquidation or reliquidation has been denied or, in the case where no protest has been filed, the period to file a protest under Section 514(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(2)) has expired,] ~~of that liquidation or reliquidation,~~ and unless payment of the duties is received by the appropriate customs officer within [thirty] ~~twenty-five~~ days after [the later of said dates, as the case may be, payment] ~~that date~~, shall be considered delinquent and bear interest from the date of [denial of the protest or termination of the period set forth in said section 514(c)(2) of the Tariff Act of 1930, whichever occurs later,] ~~liquidation or reliquidation~~ at a rate determined by the Secretary of the Treasury.".

(b) The amendment made by subsection (a) shall take effect on the thirtieth day after the date of the enactment of this Act and, [shall apply with respect to merchandise entered or withdrawn from warehouse for consumption] ~~for purposes of applying the amendment with respect to liquidations and reliquidations made before such thirtieth day, but with respect to which the duties due thereon are not paid on or before such day, such liquidations and reliquidations shall be deemed to have been made~~ on [or after] such thirtieth day.

SEC. 2. (a) Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) is amended by adding at the end thereof the following new subsection:

"(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as [estimated duties under section 505(a) of this Act or as] increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the date [of entry in the case of estimated duties and the date of liquidation or reliquidation in the case of increased duties.] ~~of liquidation or reliquidation.~~ The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section

2632 of title 28, United States Code, whichever occurs first.".

(b) The amendment made by subsection (a) shall apply with respect to reliquidation determinations made or ordered on or after the date of the enactment of this Act.

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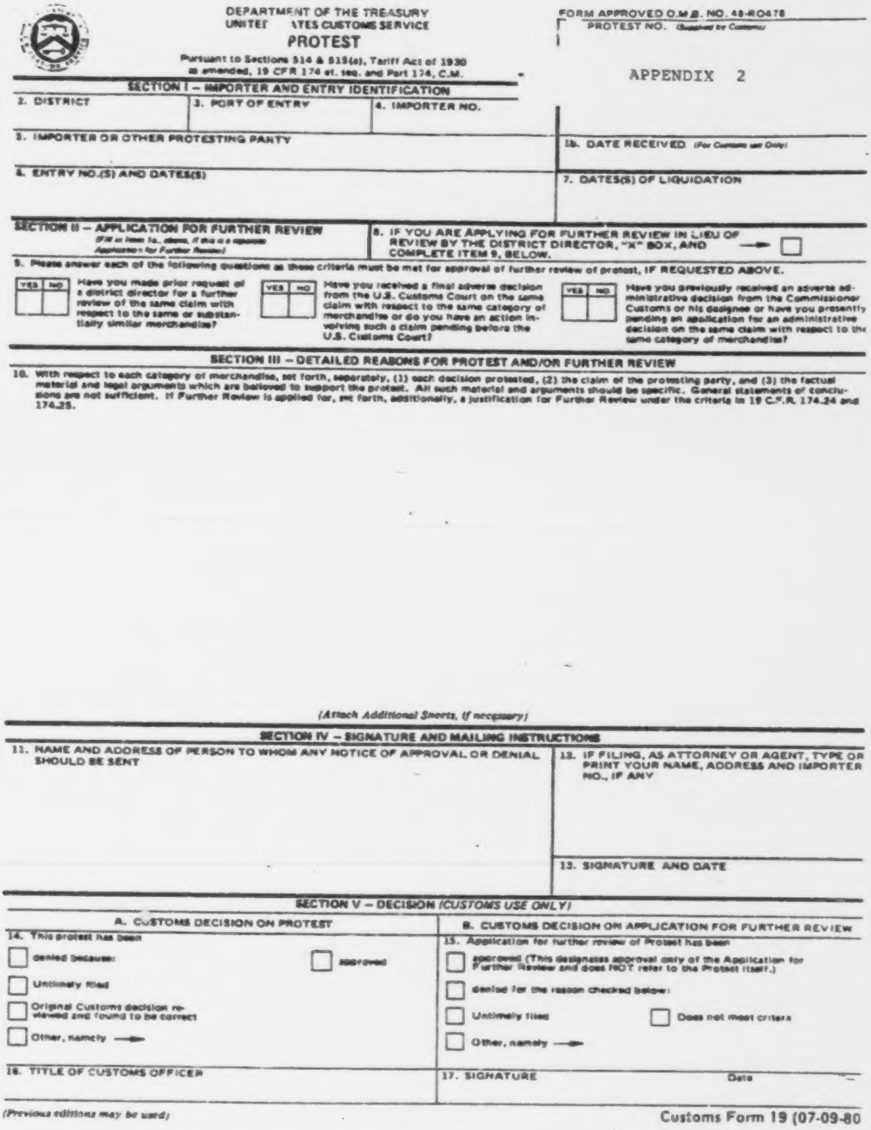
[Sec. 3. Section 515 of the Tariff Act of 1930 (19 U.S.C. 1515) is amended by inserting a comma immediately after "excess" (in line 7 of the statute as it appears in 19 U.S.C.) and then adding immediately before "shall" (in the same line) the following: "including any payment of interest on same,"]

APPENDIX 2



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
PROTEST
Pursuant to Sections 514 & 515(a), Tariff Act of 1930
as amended, 19 CFR 174 et. seq. and Part 174, C.M.

FORM APPROVED O.M.B. NO. 48-RO478
PROTEST NO. *(Supplied by Customs)*

SECTION I – IMPORTER AND ENTRY IDENTIFICATION

2. DISTRICT
3. PORT OF ENTRY
4. IMPORTER NO.
5. IMPORTER OR OTHER PROTESTING PARTY
1b. DATE RECEIVED *(For Customs use Only)*
6. ENTRY NO.(S) AND DATES(S)
7. DATES(S) OF LIQUIDATION

SECTION II – APPLICATION FOR FURTHER REVIEW
(Fill in Item 1a., above, if this is a separate Application for Further Review)

8. IF YOU ARE APPLYING FOR FURTHER REVIEW IN LIEU OF REVIEW BY THE DISTRICT DIRECTOR, "X" BOX, AND COMPLETE ITEM 9, BELOW. → ☐

9. Please answer each of the following questions as these criteria must be met for approval of further review of protest, IF REQUESTED ABOVE.

YES ☐ NO ☐ Have you made prior request of a district director for a further review of the same claim with respect to the same or substantially similar merchandise?

YES ☐ NO ☐ Have you received a final adverse decision from the U.S. Customs Court on the same claim with respect to the same category of merchandise or do you have an action involving such a claim pending before the U.S. Customs Court?

YES ☐ NO ☐ Have you previously received an adverse administrative decision from the Commissioner Customs or his designee or have you presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise?

SECTION III – DETAILED REASONS FOR PROTEST AND/OR FURTHER REVIEW

10. With respect to each category of merchandise, set forth, separately, (1) each decision protested, (2) the claim of the protesting party, and (3) the factual material and legal arguments which are believed to support the protest. All such material and arguments should be specific. General statements of conclusions are not sufficient. If Further Review is applied for, set forth, additionally, a justification for Further Review under the criteria in 19 C.F.R. 174.24 and 174.25.

(Attach Additional Sheets, if necessary)

SECTION IV – SIGNATURE AND MAILING INSTRUCTIONS

11. NAME AND ADDRESS OF PERSON TO WHOM ANY NOTICE OF APPROVAL OR DENIAL SHOULD BE SENT
12. IF FILING, AS ATTORNEY OR AGENT, TYPE OR PRINT YOUR NAME, ADDRESS AND IMPORTER NO., IF ANY
13. SIGNATURE AND DATE

SECTION V – DECISION *(CUSTOMS USE ONLY)*

A. CUSTOMS DECISION ON PROTEST

14. This protest has been
☐ denied because:
☐ approved
☐ Untimely filed
☐ Original Customs decision reviewed and found to be correct
☐ Other, namely →

B. CUSTOMS DECISION ON APPLICATION FOR FURTHER REVIEW

15. Application for further review of Protest has been
☐ approved (This designates approval only of the Application for Further Review and does NOT refer to the Protest itself.)
☐ denied for the reason checked below:
☐ Untimely filed
☐ Does not meet criteria
☐ Other, namely →

16. TITLE OF CUSTOMS OFFICER
17. SIGNATURE Date

(Previous editions may be used)

Customs Form 19 (07-09-80

Chairman GIBBONS. I thank you. We have a lot more work to do on this bill.

Mr. Frenzel.

Mr. FRENZEL. Is there anything he likes about it other than the number?

Chairman GIBBONS. He didn't like the number, either.

Mr. KING. I think it is a product, I think, Mr. Frenzel, of the current times when Customs and everyone is concerned about the cost of money. The state of law wasn't affected for a number of years, nobody cared about it because money was relatively cheap.

I think even now with the cost of money, to think a company, except in very rare instances, is going to go through these sorts of machinations to defer the payment of duty for 3 months or 6 months, they have got business to do, I think they are more than concerned with doing business than with this sort of manipulation that would be suggested by the sureties or by Customs.

But again, if we are going to recognize the cost of money, I think it should be recognized in providing for interest payable on excess duties deposited by importers at entry.

That period of time can extend in a lot of cases far longer than the time with which the money paid in increased duties is tied up.

Mr. FRENZEL. Thank you.

Mr. DINEEN. I wonder if I might make one statement?

Chairman GIBBONS. Yes. Identify yourself.

Mr. DINEEN. I am Michael Dineen with the Kemper Group. I note the other two witnesses here at the table indicated they were unsure of the statistics involved with respect to increased duties or protests of increased duties that have been filed within the past year, and also with respect to the Government's position on the 25-day threshold for responding to bills.

The Government does have some very good statistics on this, which are in the prepared statement which Mr. Rettinger has which document the substantial increase in protests in the last year, as well as indicate the willingness of Government to yield on the 25-day question, and perhaps increase that to 45 days or to some other level that would be more reasonable.

Clearly we have been working with the administration and working with the Customs Service on this issue. I think that they are prepared to be reasonable and to document the need for the legislation.

I am not here representing them, but I know they have the facts to make the case for this legislation.

Chairman GIBBONS. Yes, maybe you can get them together and see what we can do to work out some of these problems. Thank you very much.

Let's go now to Mr. Bonker's bill. We have the American Plywood Association, ITT Rayonier, and MacMillan Bloedel, Inc.

STATEMENT OF NEVA I. JONES, GOVERNMENT RELATIONS CONSULTANT, AMERICAN PLYWOOD ASSOCIATION, PRESENTING STATEMENT OF BRONSON J. LEWIS, EXECUTIVE VICE PRESIDENT

Ms. JONES. Mr. Chairman, I am Neva Jones and I am representing the American Plywood Association as their government affairs consultant. I am making this statement on behalf of Mr. Bronson J. Lewis, who is executive vice president. He regrets he is unable to be here.

The American Plywood Association represents producers of more than 81 percent of the structural panels manufactured in the United States. Its membership is located across the United States, and includes small employee-owned co-ops, as well as large Fortune 500 companies.

The APA supports H.R. 5182, a bill which would clarify headnotes in schedule 2, part 3, of the Tariff Schedule of the United States, so that all headnotes in that section are consistent in the description of wood panel products.

Attached to my statement is an edited version of the headnotes showing how the proposed changes would affect the schedule.

As you know, headnotes are used to categorize imported products and duty rates. I draw your attention to headnotes 1(b), 1(c), and 1(e) in the referenced attachment. Headnotes 1(b) and 1(c) use physical appearance of a product to determine its classification as "plywood" or "wood veneer panels," whereas headnote 1(e) bases determination on end use for products in the category called building boards. It is this inconsistency which H.R. 5182 would correct.

An example of the problem this inconsistency can cause is an existing interpretation by the Customs Service on plywood panels being imported from Canada. Canadian cedar plywood, which has been shiplapped on the long sides, is being brought into this country classified by Customs as "building boards."

This imported edge-worked plywood is marketed, advertised, sold, and used as plywood, the same purposes as domestically produced plywood whether or not it has been edge-worked. The process of creating tongue-and-groove or shiplapped edges on the imported plywood is not a manufacturing process which results in a new and different article.

However, the category "building boards" carries a tariff calculated in 1983 at 8.4 percent, whereas the duty rate for "plywood" is 20 percent. The Customs Service classified the import on the basis of end use, which in this case is exterior siding, rather than on its physical description as a "rigid wood veneer assembly" which applies to plywood.

There is a concern that this example sets a precedent. What is to prevent tongue-and-groove panels used for flooring, which currently come into the United States classed as plywood, from entering as building boards?

According to the U.S. International Trade Commission, the category "building boards" includes heavy cardboard insulation, styrofoam insulation boards, hardboard, ceiling tiles, and wallboard units. Commonsense tells one that such products would not be interchangeable with cedar plywood which has been edge-worked.

H.R. 5182 would provide clarification for Customs so that the product can be accurately categorized and appropriate duty rates can be levied.

It is to the benefit of the United States to make the headnotes consistent so that the appropriate duties are collected. A chart showing the 10-year import history of item 245.80, "building boards," is attachment B to this statement. In 1979, imports totaled 97,000 square feet. In 1980, imports jumped to 1,032,000 square feet. In 1981, the APA petitioned Customs for a reclassification. But as Chairman Gibbons has recognized in his bill, H.R. 4784, the Trade Remedies Reform Act of 1984, remedy under our country's trade law takes too long and is expensive and cumbersome. APA is experiencing such treatment at the Court of International Trade, where our appeal of the Customs decision regarding this classification problem has been pending for 18 months. The earliest we can expect that court's action is in the fall of 1984. To avoid problems like this in the future, we urge this subcommittee to act favorably on H.R. 5182, which would make clear the intentions of the tariff schedule descriptions.

Thank you for your consideration.

[The attachments to the statement follow:]

G S P	Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty		
					1	LDDC	2

PART 3. - WOOD VENEERS, PLYWOOD AND OTHER WOOD-VENEER ASSEMBLIES, AND BUILDING BOARDS

Part 3 headnotes:

1. For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) Wood veneers: Wood sheets or strips, regardless of thickness, quality or intended use, produced by the slicing or rotary cutting of logs or flitches; and wood sheets, not over 1/4 inch in thickness, produced by sawing and of a type used to overlay inferior material;

(b) Plywood: Rigid wood-veneer assemblies bonded together with adhesive substances having a central ply or core of wood veneer or lumber with one or more plies of wood veneer on each side thereof, the grain of at least one ply being at an angle (usually a right angle) with the grain of one or more of the other plies, including such assemblies the face ply (or plies) of which has been mechanically scored, striated, or similarly processed;

or any edge of which has been tongued, grooved, lapped, or otherwise worked;

(c) Wood-veneer panels: Rigid wood-veneer assemblies, bonded together with adhesive substances, except plywood, with a wood-veneer ply on one side of a backing, or on both sides of a core, which backing or core may be composed of lumber, veneer, hardboard, wood particle board, or other material, including such assemblies the face ply (or plies) of which has been mechanically scored, striated, or similarly processed;

or any edge of which has been tongued, grooved, lapped, or otherwise worked;

(d) Cellular panels: Rigid assemblies bonded together with adhesive substances with both sides or faces consisting of veneer, plywood, lumber, wood-veneer panels, hardboard, wood particle board, or other board composed of vegetable fibers, and with a core of hollow, honeycomb, or sponge-like construction, whether or not the interstices are filled with loose or loosely matted fibrous materials; and

(e) Building boards: Panels of rigid construction, including tiles and insulation board, ~~generally used in the construction of walls, ceilings, or other parts of buildings~~.

other than plywood, wood-veneer panels, or cellular panels.

2. The term "face finished", as applied to the boards and panels provided for in this part, means that one or both surfaces of a panel or board have been treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints, or enamels, or have been overlaid with paper, fabric, plastics, base metal or other material.

Rate of Duty:

Plywood (TSUS 240.21)	20%
Building Boards (TSUS 245.80)	8.3% (1983) 7.4% (1984)

Attachment B
American Plywood Association
H.R. 5182

U.S. IMPORTS: Building Boards (TSUS 245.80)

CANADA

	Quantity (in 000 lbs.)	Duty Rate
1973	—	2.5¢/lb. plus 4.5% a.v.
1974	3	
1975	1	
1976	4	
1977	65	
1978	24	
1979	160	
1980	1,415	2.3¢/lb. plus 4.3% a.v.
1981	3,955	
1982	6,797	
1983	8,299	
1984 (thru March)	1,779	1.7¢/lb. plus 3.1% a.v.

SOURCE: U.S. International Trade Commission

Chairman GIBBONS. Thank you very much. A very good statement.

ITT Rayonier, Mr. Berry.

STATEMENT OF WILLIAM S. BERRY, VICE PRESIDENT AND DIRECTOR OF WOOD AND FOREST PRODUCTS, ITT RAYONIER, INC.

Mr. BERRY. Mr. Chairman, members of the committee, thank you for the opportunity to testify in support of H.R. 5182.

I am William S. Berry, vice president and director of wood and forest products for ITT Rayonier, a forest products company with headquarters in Stamford, CT. We have more than 5,000 employees in the Northwest and Southeast United States. We own or manage 1.3 million acres of timber land in the United States. We sell pulp, logs, plywood, treated wood products, and chemical byproducts made from trees, both domestically and in international markets. ITT Rayonier is a subsidiary of ITT Corp.

ITT Rayonier has a cedar plywood plant, called Peninsula Plywood, in Port Angeles, WA, which manufactures cedar plywood for exterior and interior siding uses. Our product is sold throughout the United States.

In 1980, because of severely depressed domestic markets and an inability to compete with lower priced Canadian cedar plywood, we were forced to reduce our employment from 400 to 250, and our operation from 5 days a week to only 4.

In addition, we experienced and continue to experience many weeks when we do not have sufficient orders to warrant production.

The rated capacity of our mill is 100 million square feet of plywood a year. In 1976, 1977, and 1978, we operated with 400 employees at 96, 97, and 92 percent of capacity, respectively. But in 1979, that dropped to 83 percent. And in 1980, when we were forced to lay off 150 employees, we produced at only 43 percent of capacity. In 1981, the figure was 47 percent, in 1982 it was 42 percent, and last year, we made 56 percent of capacity with 55 days that employees did not work at all. In fact, since 1980, our reduced number of employees have lost 266 days of work each, a total of more than 1 work year out of the last 4. That curtailed schedule continues in 1984. Coincidentally, it was in 1980 that we began to see significant shipments of cedar plywood enter this country under the building boards classification.

Obviously, part of the problem has been the continued depressed nature of the U.S. building market. But clearly, we would have operated at much higher levels if Canadian plywood had been levied the 20 percent ad valorem duty under the plywood classification rather than the much lower duty under the building boards classification.

Since 1980, we have found our product undersold by the Canadians by as much as $50 per 1,000 square feet in markets as diverse as Louisiana, Florida, Georgia, and Massachusetts. We recognize that Canadian exports enjoy the advantage of the cheap Canadian dollar and low-cost transportation. There is little we can do about that. But we did not expect that Canadian cedar plywood would not be classified as plywood, which has a 20-percent duty, but would be classified instead as a "building board," which last year had an effective duty of only 8.25 percent. To make matters worse, the building boards category is on a declining tariff schedule and by 1987 the effective rate will be only 5.6 percent. Based on statistics on building board imports from the U.S. Department of Commerce, in 1983 the 20-percent tariff would have resulted in a duty of $94 per thousand square feet. Instead, the Canadians paid a duty of only $38 per thousand square feet, a difference of $56 per thousand which was, coincidentally, about the same amount by which they managed to undersell our product.

We find it distressing that our own Customs people are not properly enforcing the tariff codes of the United States. Plywood is specifically described in the tariff schedules. The Canadians do not market their product in the United States as building board, but as "western red cedar-faced plywood panels," according to their brochures. We know it is plywood. The Canadians know it is plywood. Only our U.S. Customs seems not to know it is plywood.

We are not asking that new categories be added to the tariff schedules, only that the existing code be enforced as it was intended to be. Therefore, we support this language clarification.

Thank you.

Chairman GIBBONS. Thank you.

And now, let's see, we have Mr. Rehm.

STATEMENT OF JOHN B. REHM, COUNSEL, MacMILLAN BLOEDEL BUILDING MATERIALS DIVISION OF MacMILLAN BLOEDEL, INC.

Mr. REHM. Yes, sir, Mr. Chairman, thank you.

My name is John B. Rehm, of the law firm of Busby, Rehm & Leonard. I am here today representing the MacMillan & Bloedel Building Materials Division of MacMillan Bloedel, Inc., a U.S. corporation owned by its parent in Canada, MacMillan Bloedel, Ltd.

You already have our prepared statement. What I want to do now is——

Chairman GIBBONS. We will put them in the record, all of them.

Mr. REHM. Of course.

I want to respond to, and comment on, points that have been made today both by Congressman Bonker and by the two previous witnesses.

First, I was pleased to hear Congressman Bonker make two points. He said that this provision that we have been taking about is not a loophole. He said that, in his view, Customs was probably right in the manner in which it is classifying these products, although I gather APA disagrees with that.

He also said that there was no unfair trade practice going on. He said, I think I am paraphrasing him correctly, that the Canadians were properly taking advantage of a tariff provision.

What are the arguments then being made in support of this bill? Let me run them down quickly as I have heard them. First, the headnote concerning building boards is inconsistent with the other headnotes that were mentioned, I gather the theory is that the other headnotes are based upon composition, and the headnotes for building boards is based upon what we call chief use.

That is a difference, but, on the other hand, there are many chief use provisions in the tariff schedules. I don't really know what consistency or inconsistency means in this context.

Second, Customs is not properly administering the statute. I fail to understand that Customs has ruled ever since 1968 that this product, edge-worked and with other features, does not qualify as simply plywood, but indeed does qualify as building boards if the chief use test is met, that is to say, if it is chiefly used in the construction of walls, ceilings, or other parts of buildings.

I must assume that, when the tariff schedules were prepared by the Tariff Commission in the late fifties, when they were approved by the Congress and indeed this subcommittee and full committee, this was considered to be a fair and thoughtful way of identifying various wood products.

As I say, since 1968, that has repeatedly been Customs position. I am a little surprised to hear mention made this morning that this was a big surprise. There are at least, by my count, six formal rulings that Customs has issued since 1968, construing the provision for building boards.

Another point that has been made is that this product is sold or advertised as plywood and has all the basic uses of plywood.

Our clients' brochure has just been held up to you. This is the product we are talking about, Mr. Chairman. I guess one would call it four-ply plywood, with a cedar face—that is the cedar face right here. It is essentially used for exterior walls of houses. In addition, it is what is called shiplapped. One panel fits over the other and produces a weather-tight construction.

I am told by our client this is not now sold or regarded as plywood. It is an advanced product by virtue of cedar facing and shiplapping, which is a form of edgeworking.

Another argument is this horrendous increase in imports. It is the old story. If you take a very low base, and you can cite some increase in the import of the product, you can come up with a rather striking percentage increase.

We have made an attempt, it is not easy to do, to determine the import-consumption ratio of shiplapped products of this kind versus domestically produced shiplapped products. We have done so in informal consultations with the staff of the International Trade Commission, but I want to make clear that what I am about to tell you is our estimate, not theirs.

Based upon our best estimate, we are dealing with an import-consumption ratio of well below 1 percent. Indeed, by my calculation this morning, it is probably in the order of three-tenths of 1 percent. I know of very few companies or industries that have ever come before the Congress and urged some kind of tariff protection when the import-consumption ratio is that low.

We have just heard references to declines in employment, capacity utilization, and other factors. It is not clear to me whether the testimony is to the effect that all of those problems are attributable to imports of this product. I certainly think that question deserves consideration, but beyond that, what is the state of the industry as a whole? We have only heard from one company this morning. With such a very small import-consumption ratio, I seriously doubt that this industry throughout the country can make out any kind of a case consistent with the concepts you and I are familiar with of material injury or serious injury.

Finally, as was mentioned to you by the Department of Commerce this morning, the rate for building boards is bound in the GATT. This bill would clearly violate the bound rate. We would therefore subject ourselves to the requirement either to grant compensation or to suffer retaliation.

You put it very well this morning, Mr. Chairman. That means that other U.S. industries will suffer, either by having their tariff protection reduced, or by having their exports encounter higher tariffs.

In short, I fail to see any justification for this bill, whether based upon abstract inconsistencies in the tariff schedules, or economic injury, or in light of our international obligations. On all those counts, it seems to me, this bill simply has no justification.

We are urging you not to report it out.

Thank you.

[The prepared statement follows:]

STATEMENT OF JOHN B. REHM, COUNSEL, MACMILLAN BLOEDEL BUILDING MATERIALS DIVISION, MACMILLAN BLOEDEL INC.

H.R. 5182 is objectionable for the following six reasons and should therefore be disapproved by the Subcommittee on Trade and the Committee on Ways and Means:

1. It is based on a misunderstanding of the provision in the Tariff Schedules of the United States concerning building boards.
2. It purports to close a "loophole" that is, in fact, nonexistent.
3. It would prejudge an issue now before the U.S. Court of International Trade.
4. It would violate U.S. obligations under the General Agreement on Tariffs and Trade (GATT) and injure other U.S. industries.
5. It is not justified on economic grounds.
6. It is, despite the claim to the contrary, protectionist in nature.

This statement is presented on behalf of the MacMillan Bloedel Building Materials Division of MacMillan Bloedel Inc., a U.S. corporation that is owned by MacMillan Bloedel Limited, Vancouver, British Columbia. MacMillan Bloedel Building Materials Division imports and distributes lumber and other products manufactured by MacMillan Bloedel Limited, including building boards.

H.R. 5182 was introduced by Congressman Bonker (D-Wash.) on March 20, 1984. Congressman Bonker explained the bill in his statement that was printed at page E1086 of the March 20, 1984, Congressional Record. A copy of that statement is attached.

The Tariff Schedules of the United States (TSUS) provide for softwood plywood in item 240.21. The TSUS also contain two provisions covering building boards—items 245.80 and 245.90. Item 245.80 covers laminated boards, and item 245.90 covers other boards made from vegetable fibers. It is reasonably clear from Congressman Bonker's statement that his bill is directed against item 245.80 and not item 245.90, particularly since it refers only to the rate of duty applicable to item 245.80. The rate of duty under item 240.21 is 20 percent, while the rate of duty under item 245.80 is effectively 10 percent according to Congressman Bonker's statement.

In the case of MacMillan Bloedel Inc., the product in question is an exterior-grade, cedar-faced siding panel that is edge-worked, as by being shiplapped. The cedar facing provides durability against exposure to various weather conditions. The edge-worked joint affords a weather-tight joint between panels. The face of the panel is texturized to provide a rough sawn appearance, and it is grooved at intervals for decorative purposes to simulate the appearance of boards. The product is used almost entirely as exterior siding on walls of houses. It is no longer plywood, and it is not saleable or useable for the applications for which plywood is typically used.

Against this background, the bill is objectionable for the following six reasons.

First, the bill is based upon a misunderstanding of item 245.80, which covers laminated building boards. As defined in headnote 1(e) of part 3 of schedule 2 of the TSUS, building boards are panels of rigid construction that are "chiefly used in the construction of walls, ceilings, or other parts of buildings". Therefore, mere edgeworking of plywood does not in and of itself qualify the plywood as laminated building boards. The U.S. Customs Service (Customs) must determine that the edge-worked plywood is chiefly used in the construction of parts of buildings. As noted above, MacMillan Bloedel's product is significantly different from plywood and satisfies all the criteria for classification as building boards.

Second, the bill purports to close a "loophole" that is, in fact, nonexistent. Plywood that has been edged and that is chiefly used in the construction of parts of buildings has been classified as building baords sice 1968. In fact, Customs has issued several formal rulings since 1968 classifying such plywood as building boards. Reliance upon such Customs' ruling over a period of about 16 years hardly constitutes the exploitation of a "loophole".

Third, the bill would prejudge an issue that is now before the U.S. Court of International Trade (CIT). On August 25, 1983, the American Plywood Association (APA) filed with the CIT a complaint against the U.S. Government, taking the position that the edge-worked plywood should be classified not as building boards but as plywood. The U.S. Government filed its answer to the complaint on October 31, 1983. Since then, APA has engaged in pre-trial discovery. MacMillan Bloedel Inc. is a party in interest in the action. Trial is not expected for several months, and the CIT is not likely to issue its decision before the fall of 1984. The Congress should therefore defer any action until the courts have finally resolved the issue.

Fourth, the bill would violate the General Agreement on Tariffs and Trade (GATT) and thereby injure other U.S. industries. The rate of duty in item 245.80 is bound in the U.S. Schedule XX to the GATT. That is, the United States has undertaken a formal international obligation not to change that rate except in accordance with specific procedures prescribed by the GATT. Since H.R. 5182 would not comply with such procedures, it would violate the U.S. obligation. Such violation would cause other U.S. industries to suffer. The United States would either have to pay compensation in the form of reduced duties on imports or suffer retaliation in the form of increased duties on exports.

Fifth, the bill is not justified on economic grounds. Although Canadian imports under item 245.80 have increased in recent years, they remain an insignificant portion of domestic consumption. According to the International Trade Commission, Canadian imports of all softwood plywood have traditionally accounted for less than 1 percent of domestic consumption. In the case of edge-worked plywood classified under item 245.80, which is typically softwood plywood, there is good reason to believe that Canadian imports are well under 1 percent of domestic consumption—and perhaps as little as one tenth of 1 percent. Such imports could not possibly cause or threaten injury to the domestic industry.

Sixth, the bill is, despite the claim to the contrary, protectionist in nature. In his statement, Congressman Bonker asserts that the bill "should not be regarded as protectionist". Yet it would double the rate of duty on building boards, and it would do so in opposition to 16 years of consistent Customs' rulings, in violation of U.S. obligations under the GATT, and without the slightest economic justification. On this basis, it would be hard to find a bill that better typifies protectionism.

This statement is submitted on behalf of MacMillan Bloedel Building Materials Division of MacMillan Bloedel Inc. by its Washington, D.C., counsel, John B. Rehm, Busby, Rehn and Leonard, P.C., 1629 K Street, N.W., Suite 1100, Washington, D.C. 20006 (202) 857-0700.

[From the Congressional Record, Mar. 20, 1984]

PLYWOOD TARIFFS

(By Hon. Don Bonker)

Mr. BONKER. Mr. Speaker, I am today introducing legislation to close a loophole in the U.S. tariff schedule that is needlessly and unfairly costing jobs in the Pacific Northwest wood processing industry. Left uncorrected, the job toll stemming from this problem will steadily increase.

Certain plywood sheets are being exported by Canada to the United States as building boards rather than as plywood under the U.S. tariff schedule. This subjects such Canadian exports to a much lower tariff schedule, making the products cheaper than comparable plywood produced in the United States. The tariff category called building boards was apparently intended to be a residual one for special-use construction panels that might not fall into either plywood or wood veneer panel categories.

Instead, it has become a loophole category. By simply altering the edge of a plywood sheet, foreign producers are able to get their products categorized as building boards, qualifying for the dramatically lower tariff treatment. In theory, the edgework dedicates the sheet to some unspecified special construction use. In fact, the use of such sheets is no different than plywood sheets with plain edges.

My legislation would revise the building board category to insure that it is used only for special-use panels, and not for plywood. This revision makes the U.S. tariff schedule for these products conform more closely to the international code, which contains no building board category at all. Maintenance of a building board category in the U.S. code would only frustrate efforts to insure internationally recognized tariff categories, and continue to damage our own wood products industry.

While the tariff on plywood is a flat 20 percent, the so-called building boards, used as plywood are exported subject to a tariff of 1.9 cents per pound plus 3.4 percent. The plywood industry estimates that this schedule equals a flat 10 percent tariff. Under the U.S. tariff schedule, even that will continue to decrease dramatically.

While the volumes imported from Canada under this category represents only a portion of plywood products marketed in the United States, the volume jumped an alarming 74 percent in 1982. My greatest concern is, as the tariff schedule decreases the practice of exporting plywood under the building board category may spread to all forms of plywood exported by Canada to the United States. Such a practice would be devastating to our industry.

Mr. Speaker, the wood products industry has been and remains committed to free and fair international trade, despite its losses due to numerous unfair trade practices by foreign competitors. For example, the industry strongly supports further mutual tariff reductions through negotiations with our trading partners to reduce artificial international trade barriers. The legislation I am introducing should not be regarded as protectionist or a reversal of the industry's free trade position. Rather, this bill brings the U.S. tariff schedule into closer conformity with international standards, restoring equal treatment of plywood products in the U.S. market for both foreign and domestic producers. For this reason, the legislation has the specific support and endorsement of the American Plywood Association, which represents both small and large U.S. plywood producers.

I am hopeful, Mr. Speaker, that the Committee on Ways and Means will promptly seek Executive comment on this proposal and include it in the group of miscellaneous tariff bills that it recommends favorably to the House for passage before the end of this Congress.

Chairman GIBBONS. Well, I want to thank all the witnesses for their testimony on this matter. Obviously I am going to have to look at it very closely. I have got some out in my backyard. I just built a place out of it.

Ms. JONES. How did you use it, as plywood?

Chairman GIBBONS. Well, I don't know how I used it, really. I'm always chopping it up for other things. I did build it as the siding on a house that I started off to call a tool shed, but it got so expensive I called it a teahouse. It wasn't the cost of the material; my design made it so expensive. I just wish I had built it twice as large. I was afraid the neighbors might have objected.

What caused all this? Was there a sudden change in the way that Customs was classifying this? Is that what happened, or do we have a new product here, or what is it?

You know, I've been cutting up plywood since before any of you were born, and I have seen it used in many different ways. It seems to me that the exterior-type plywood that is treated, grooved, and everything else, is a relatively new product, in my experience. I did not see it in Florida until about 10 years or 12 years ago and now I see it all over. It is used for exterior work primarily on buildings and some of it is used quite attractively and others used quite hideously. And now we have shipped stuff coming in that's pretty attractive. Is it a new product or a new classification that's causing the problem?

Mr. BERRY. The product has always been manufactured with the ship laps and as a siding since plywood siding has begun. I think the issue here is that it was incomprehensible to those of us who were in the plywood business that a product identical to what we have been manufacturing for 20 years as plywood was in fact coming in under a tariff other than plywood. It really was not until the volume surged, as was referred to earlier, that we couldn't understand why, in fact, it was coming in as it was at $50 under what we were able to manufacture it for.

As we examined it, then we discovered that it was coming in, in our mind under an incomprehensible tariff because it is plywood. It is identical to what we manufactured, ship-lap plywood siding for 20 years and yet it is coming in not as plywood. I think that is the issue.

Mr. **Frenzel**. When did it start coming in as building block rather than plywood?

Mr. **Berry**. I suspect it always had been, but it began coming in in volume so that we noticed it in 1980 to reduce our production.

Mr. **Rehm**. Mr. Chairman, the suggestion that is being made is that somehow the very same product was at one time classified as plywood and is now being classified as building boards. That's not my understanding. Insofar as we are talking about this product, which I believe makes up the bulk of the Canadian imports into this country, I can tell you for a fact, having represented the client for several years, that this has always been classified as building boards. So I don't understand the allegation that's being made that suddenly there is a big surprise here.

They may be surprised that it was initially classified as building boards, but they can't tell you that there has been a change in classification.

Chairman **Gibbons**. How did we ever end up with such a differential in the tariff? It looks to me like this is something we should have worked out years ago.

Ms. **Jones**. Some of the past history, as given to me by both the American Plywood Association and the ITC, around the last MIN the Canadians requested of the American industry to reduce the tariff that we charge, which is the 20 percent, and try to harmonize the tariff between the two countries.

So discussions started around that time and there were about three or four meetings between the industries, its representatives, about lowering the tariff. And we said that Canada has nontariff barriers by their codes and standards. If they would lower their nontariff barriers we would lower our tariff, and after all these discussions the Canadians finally agreed not to agree, so the tariff remained at the 20 percent.

However, at that time the harmonized tariff they were discussing was 8 percent. Now it's interesting to us, we have no verification that this all occurred at the same time, the increase in this particular category was marked, if you will look at the charts we have presented. And we think that it's not a problem with the violation of the GATT-bound rate, it's an interpretation by the Customs Service.

You can look at it. For some reason they have determined through a long history that this is a building board as opposed to plywood. So it's more of instruction to the Customs Service to interpret it under the intention.

Mr. **Rehm**. Mr. Chairman, let me respond to your question, because I think you were asking really how did this first come about under the TSUS in 1963. At least I understand your question to be that. As I understood the rationale, building boards, as defined in this headnote, constitute products that represent a significant advance beyond the basic plywood. And that is why it speaks in terms of—and I'm quoting—"Panels of rigid construction, including tiles and insulation board, chiefly used in the construction of walls, ceilings, or other parts of buildings."

So it seems to me that there are two aspects of that definition that carry the product beyond what I'll call ordinary plywood, namely panels of rigid construction and chief use in the construction of parts of buildings.

And if you look at the ITC tariff summaries, you will find a number of products classified under building boards, not merely this one, which I think everybody in the room would agree is not plywood. So that, as I see it, and this is the way Customs has interpreted the provision, it does attempt to cover products that are beyond plywood in one significant respect or another. That seems to me to be a rational distinction.

Chairman **Gibbons**. Well, I hate to adjourn this discussion but I have got to go over and learn about transplanted organs in the next 7 minutes. So let's resume this hearing, and these witnesses we are through with, at 1:15.

I would like to take the rest of the witnesses right now but unfortunately I have got to get a little nourishment. I cooked breakfast this morning. It wasn't very good, and I've got a long day ahead of me but I'll be back at 1:15 and we will get started on all this again. So all the witnesses that want to testify that haven't already testified, I'll meet you here in this room at 1:15.

Mr. **Berry**. Thank you very much, Mr. Chairman.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 1:15 p.m.]

AFTERNOON SESSION

Chairman **Gibbons**. Good afternoon, ladies and gentlemen.

We now go to H.R. 5783, a bill by Congresswoman Kaptur. She is here and, Marcy, if you would come forward, we would be glad to listen to you.

STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. **Kaptur**. Thank you very much, Mr. Chairman. I want to thank you for giving me the opportunity to discuss my bill, H.R. 5783, and I want to especially thank you for your accommodation and your help in moving this rather complicated item through.

I also wanted to express our thanks to George Weise on your staff, who has just been wonderful to us.

Chairman **Gibbons**. He is smiling back here.

Ms. **Kaptur**. Your staff has been excellent, and so have you.

I want you to know that this legislation is of special importance to my district. In my northwestern Ohio district the unemployment rate still hovers around the double-digit level and with such unemployment, we cannot afford to have any business disadvantaged. I was, therefore, quite disturbed to learn of the imposition of a duty on a major component, umbrella frames, of a local manufacturing business. This duty on umbrella frames is not protecting any industry in our Nation for there are no longer any domestic hand-held rain umbrella frame manufacturers. The duty only injures an already hard-pressed domestic industry.

The remaining eight American rain umbrella manufacturers rely almost completely upon Taiwan for frames. In 1983, Taiwan lost its GSP status because it accounted for more than 50 percent of the imports of umbrella frames, and the trade in the item exceeded $1.3 million. Thus, a 15-percent duty was imposed on frames from Taiwan. The duty is especially harmful because there are no other foreign producers to whom American umbrella producers can turn for large quantities of quality frames.

H.R. 5783 would aid the domestic umbrella manufacturers by suspending the duty on hand-held metal rain umbrella frames for 3 years. Currently over 95 percent of the umbrellas sold in the United States are produced overseas and if the duty on frames is not suspended, 100 percent of the umbrellas sold in the United States may soon be produced overseas. The remaining domestic umbrella manufacturers will be forced to raise their prices if the duty on frames is not suspended. Higher prices will likely force them out of business. Already, the domestic umbrella manufacturers are taking hefty losses on the advance sales that they made before notification of the new duty.

My bill clearly states that the duty would only be suspended on the frames for rain umbrellas. Beach and patio metal umbrella frames are excluded from the bill—the 15-percent duty on such frames from Taiwan would remain in place. H.R. 5783 was drafted in this way in consideration of the domestic beach and patio metal umbrella frame industry which supports the duty on the frames produced by their chief competitor, Taiwan. I have been in close touch with representatives from the beach and patio umbrella frame industry. The manufacturers do not oppose my bill because it would not affect their industry.

I have also been in close contact with the administration and this subcommittee. It is my understanding that an amendment to H.R. 5783, to change the duty suspension from 3 years to 1 year, will make the bill more acceptable to all parties. I believe that the gentleman from Georgia, Mr. Jenkins, will offer this amendment in markup. I support the amendment and thank Mr. Jenkins for his interest in the economic viability of the umbrella industry.

Unfortunately, a representative from Haas-Jordan Co., the umbrella manufacturing industry in my district, was unable to come to Washington to testify. However, I would like to submit a copy of his statement for the record.

I commend the chairman for his leadership in moving these noncontroversial tariff and trade bills.

[The prepared statement follows:]

STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, I thank you for giving me the opportunity today to discuss my bill, H.R. 5783. I greatly appreciate your assistance, and the assistance of your excellent staff, on this legislation of special importance to my district.

In my northwest Ohio district, the unemployment rate still hovers around a double-digit figure. With such high unemployment, we cannot afford to have any business disadvantaged. I was therefore quite disturbed to learn of the imposition of a duty on a major component—umbrella frames—of a local manufacturing business. This duty on umbrella frames is not protecting any industry in our nation, for there are no longer any domestic hand-held rain umbrella frame manufactures. The duty only *injures* an already hard-pressed domestic industry.

The remaining eight American rain-umbrella manufacturers rely almost completely upon Taiwan for frames. In 1983, Taiwan lost its GSP status because it accounted for more than 50 percent of the imports of umbrella frames, and the trade in the item exceeded $1.3 million. Thus, a 15 percent duty was imposed on frames from Taiwan. The duty is especially harmful because there are no other foreign producers to whom American umbrella producers can turn to for large quantities of quality frames.

H.R. 5783 would aid the domestic umbrella manufacturers by suspending the duty on hand-held metal rain umbrella frames for three years. Currently, over 95 percent of the umbrellas sold in the United States are produced overseas, and if the duty on frames is not suspended, 100 percent of the umbrellas sold in the U.S. may soon be produced overseas. The remaining domestic umbrella manufacturers will be forced to raise their prices if the duty on frames is not suspended. Higher prices will likely force them out of business. Already, the domestic umbrella manufacturers are taking hefty losses on the advance sales that they made before notification of the new duty.

My bill clearly states that the duty would only be suspended on the frames for rain umbrellas. Beach and patio metal umbrella frames are excluded from the bill—the 15 percent duty on such frames from Taiwan would remain in place. H.R. 5783 was drafted in this way in consideration of the domestic beach and patio metal umbrella frame industry which supports the duty on the frames produced by their chief competitor, Taiwan, I have been in close touch with representatives from the beach and patio umbrella frame industry. The manufacturers do not oppose my bill, because it would not affect their industry.

I have also been in close contact with the Administration and this subcommittee. It is my understanding that an amendment to H.R. 5783, to change the duty suspension from three years to one year, will make the bill more acceptable to all parties. I believe that the gentleman from Georgia, Mr. Jenkins, will offer this amendment in markup. I support the amendment, and thank Mr. Jenkins for his interest in the economic viability of the umbrella industry.

Unfortunately, a representative from Haas-Jordan Company, the umbrella manufacturing industry in my district, was unable to come to Washington to testify. However, I would like to submit a copy of his statement for the record.

I commend the Chairman for his leadership in moving these noncontroversial tariff and trade bills. I urge the subcommittee to support H.R. 5783, as it will be amended by Mr. Jenkins during markup. I thank the subcommittee members in advance for their support of this bill.

Chairman GIBBONS. We will accept the Haas-Jordan statement and put it in the record, and I am glad that the administration has no serious objection to your bill. With that small amendment, we can move it.

Ms. KAPTUR. Thank you very much, Mr. Chairman.

Chairman GIBBONS. Thank you.

Let's go to Mr. Glickman's bill, H.R. 5455. We have a panel of the Independent Gasoline Marketers Council, Mr. Blum and Mr. Hall with the Wickland Oil Co., if they would come forward.

Then we will have another panel later on.

Go right ahead, gentlemen. Let's see, Mr. Blum, you are first.

Mr. HALL. If it is all right, I would like to go first.

Chairman GIBBONS. I just called it the way you appeared on the list here. Sometimes some of you folks aren't that cooperative with each other.

STATEMENT OF DANIEL E. HALL, VICE PRESIDENT AND GENERAL COUNSEL, WICKLAND OIL CO.

Mr. HALL. My name is Dan Hall. I am vice president and general counsel of Wickland Oil Co. of Sacramento, CA. Wickland is one of the few private brand gasoline marketers still in existence on the west coast. We market gasoline at retail through about 85 gasoline stations.

We also supply gasoline at the wholesale level to about 700 accounts. These accounts predominantly include other independent gasoline station operators as well as product end users.

Wickland currently obtains its supply both from domestic and offshore sources. As an integral part of our operation, we import refined petroleum products into the United States through our marine products terminal located in San Francisco Bay. These products are subsequently combined with other substances to provide finished motor gasoline for resale through our retail and wholesale operations.

My purpose in appearing today is to emphasize to this subcommittee the existence of a substantial anomaly in the tariff schedules of the United States which is imposing a significant burden on trade and as a result, significantly limiting the ability of companies such as Wickland to compete effectively in the motor gasoline market.

Specifically, the tariff schedules, as recently reinterpreted by the Customs Service, imposed substantially higher tariffs on certain petroleum products used to manufacture motor gasoline than they impose on the finished product motor gasoline itself. We request that the subcommittee act to correct this anomaly and thereby eliminate this substantial burden on international trade which is currently resulting and which also results in severe anticompetitive consequences.

Basically the commercial problem that Wickland has is this. We currently bring in gasoline which is used as a gasoline in many countries. For instance, the Peoples Republic of China is a seller that we buy from. This gasoline is brought into our terminal and is upgraded to U.S. specifications.

Up until the start of this year, that was tariffed at the motor fuel rate of 1¼ cents per gallon. After January, Customs has determined that it should not be classified as motor fuel because its octane rating is below the ASTM standards for U.S. spec gasoline. As a result, they have reclassified this product to the extent that it does come in under 87 octane as a chemical mixture, in this case a lead mixture, which results in a tariff of 11 percent ad valorem rather than 1¼ cents per gallon. That is a substantial difference.

It is especially excruciating to have to look at a problem like this retrospectively after you have brought a product in relying on the lower tariff rate.

Chairman GIBBONS. One and a quarter versus——

Mr. **Hall.** If you aren't put into the 1¼ cent classification, there is no, at this point, no exact classification to deal with the products. So, Customs has, as of January, been moving it into whatever they consider to be the applicable chemical mixtures section. In the case of China's gasoline, they said because it does contain lead that it is a tetraethyl lead compound and, therefore, subject to an ad valorem tax of 11.1 percent.

Now another example that we have come across recently is Indonesian unleaded gasoline. It meets the ASTM specs for unleaded gasoline except that its vapor pressure is too low. In other words, when we brought it in, we would have to blend it to increase the vapor pressure. Under those circumstances, Customs would reclassify that, again not as a motor fuel, but rather as a chemical mixture, in all likelihood a benzenoide, which would subject it to a 17.3-percent ad valorem.

So there is a substantial difference in treatment that has recently come about. That concerns us both because, No. 1, it limits the amount of product that we can bring in, and, No. 2, even when we contracted with somebody with a foreign source for on-spec product, if that product happens to get here, it is pumped into our tanks and subsequently is tested and found not to meet U.S. specs, all of a sudden we are faced with a very substantial reliquidation problem.

Now, as we understand it, currently there have been several bills and proposals that have been submitted to the subcommittee in recent weeks with this problem. It is my understanding that H.R. 4232 was introduced by Congressman Brooks and that does deal with a portion of the issue, an important aspect of the issue. It is my understanding that that bill has been deemed noncontroversial by your subcommittee.

The bill we are talking about today by Congressman Glickman is another bill that is focused on a portion of the problem. The administration's proposals, which have been communicated in letter form to your subcommittee and which were alluded to earlier by the special trade representative, have taken basically the broadest approach to the problem and have basically said "Let's just make all motor fuel and all motor fuel blend stocks tariffable at the same rate, 1¼ cents per gallon."

That seems eminently reasonably to us. I think that it is fair and equitable, especially given the fact that in past weeks H.R. 4232 has met with no opposition and on that basis, we would hope that you would pass the Glickman proposal as amended by the administration.

One thing I would like to point out in closing is that to us, as a west coast independent marketer who is basically in a market which is dominated by a few major oil companies, it is absolutely essential for us to be able to go to the outside to the international market in order to keep the domestic refiners honest.

At the present time were we denied the ability to bring in international gasoline blend stocks, we would be in a position where we could not compete with major oil companies, specifically in this situation with Shell and Arco, who are currently the market-makers, in the market. So, with that, I will pass the baton to Jack Blum.

[The prepared statement follows:]

STATEMENT OF DANIEL E. HALL, VICE PRESIDENT AND GENERAL COUNSEL, WICKLAND OIL CO.

My name is Daniel E. Hall. I am Vice President and General Counsel of Wickland Oil Company of Sacramento, California, on behalf of which I appear today.

Wickland Oil Company is one of the few private brand gasoline marketers still in existence on the West Coast. We market gasoline at retail through 85 gasoline stations located in California, Oregon, and Nevada. Wickland also supplies gasoline at the wholesale level to over 700 accounts. These accounts include a great many independent gasoline station operators, as well as product end users such as logging and trucking companies.

Wickland obtains its product supply both from domestic and off-shore sources. As an integral part of our operation, we import refined petroleum products into the United States through our $20 million marine products terminal located in San Francisco Bay. These products are subsequently combined with other substances to provide finished motor gasoline for resale in the domestic market.

My purpose in appearing today is to emphasize to the Members of the Subcommittee the existence of a substantial anomaly in the tariff schedules of the United States which is imposing a significant burden on trade, and as a result, significantly limiting the ability of companies such as ours to compete effectively in the motor gasoline market. Specifically, the tariff schedules as currently interpreted by the Customs Service impose substantially higher tariffs on petroleum products used to manufacture motor gasoline than they impose on the finished product, motor gasoline, itself. We request that the Subcommittee act expeditiously to correct this anomaly and thereby eliminate the substantial burden upon international trade in which it results and the anticompetitive consequences which this burden generates.

The commercial problem, incurred by companies such as Wickland, results from the realities of the petroleum marketplace. Specifically, Wickland, and others similarly situated, will contract with an off-shore producer for the purchase of particular petroleum products and will then import those products. Frequently, the products which we obtain in the foregoing manner will have chemical characteristics slightly different than those which we anticipated. For example, Wickland historically has purchased substantial volumes of leaded gasoline from the Peoples Republic of China. Upon importation, it may be discovered that the octane number of this material is less than the 87 octane criterion employed by Customs determine the proper classification of the imported product. Under such circumstances, this Chinese "gasoline" would not be tariffed as motor fuel at $.0125 per gallon. Rather, Customs would impose a duty of over 11 percent ad valorem. As a result, the importer of such product would face an unexpected economic burden of several hundreds of thousands of dollars. This unanticipated cost will render the product totally noncompetitive in the marketplace. Similarly, unleaded gasoline available from Indonesia may have Reid Vapor Pressure characteristics below the standard used by Customs to classify the product as motor fuel. As a result, such product could be subject to a tariff of over 17 percent ad valorem. In short, commodities used by importers, such as Wickland, for use in the manufacture of motor gasoline are frequently subject to a tariff rate more than eight times higher than the rate imposed on the finished product which they are employed to manufacture. The uncertainty experienced by our company and others with respect to our tariff exposure on the importation of such products has forced us to curtail dramatically the operations of which these products have been an integral component. As a result, our ability to compete effectively in the market for motor gasoline has been diminished to our detriment and the detriment of our customers.

The above-described problem has been addressed by at least three proposals of which the Committee is aware: H.R. 4232 introduced by Mr. Brooks, H.R. 5455 introduced by Mr. Glickman, and an Administration proposal submitted to Chairman Rostenkowski by letter dated May 23, 1984 from the United States Special Trade Representative. Mr. Brooks' proposal addresses a particular category of products which are primarily used as a motor fuel blendstock. It is our understanding that H.R. 4232 is the result of substantial efforts by Mr. Brooks and his staff in conjunction with the Administration.

Mr. Glickman's proposal, H.R. 5455, would address another group of products primarily used as blendstocks for motor fuel. However, like Mr. Brooks' proposal, it addresses only a limited category of products and its enactment, while resolving the problem with respect to this limited category of products, would not solve the entire problem.

The Administration's proposal is attractive in that it would address the entire problem faced by companies such as Wickland. However, enactment of the Administration's proposal in its current form would raise two problems of concern to Mr. Brooks. These concerns are set forth in Mr. Brooks' letter of June 4, 1984 to Chairman Gibbons.[1] Specifically, absent appropriate modification, enactment of the Administration's proposal could: (1) undo the work done by Mr. Brooks in H.R. 4232, and (2) result in an increase in the tariff on straight-run naphtha, TSUS Item 475.35. A compromise position which would both eliminate the existing anomaly in the tariff schedules and resolve Mr. Brooks' concerns, would be to modify the Administration's proposal to exempt from its coverage straight-run naphtha (TSUS Item 475.35) and those products which are the subject of H.R. 4232 and then enact both that proposal, as amended, and H.R. 4232.

The enactment of both H.R. 4232 and the Administration's proposal, amended to exclude from its coverage straight-run naphtha (TSUS Item 475.35) and the specific products addressed in H.R. 4232, would ensure that the specific portion of the problem addressed by H.R. 4232 would be resolved in the manner proposed by Mr. Brooks. Moreover, such action would ensure that the remainder of the problem, including those portions of it addressed by H.R. 5455, would be resolved in a manner which neither impedes trade nor detrimentally affects the legitimate interests of domestic manufacturers of gasoline. Specifically, companies, such as Wickland, would be able to resume their normal activities with the country's trading partners and domestic refiners will be unable to complain credibly that they have been disadvantaged by legislation which imposes a duty on components of gasoline which is no lower than the duty imposed on the finished product.

The anomaly which exists in the tariff schedules' current treatment of motor fuel blendstocks, in comparison to the finished product motor gasoline, is obvious and must be rectified. Absent such action, substantial trade with historic trading partners such as Mexico and Indonesia, as well as with new trading partners such as the Peoples Republic of China, will be unnecessarily impaired. Mr. Brooks has worked diligently to correct one portion of this anomaly through H.R. 4232. The Administration's proposal, provided that it be modified in the appropriate manner to exempt from its scope of coverage straight-run naphtha (TSUS Item 475.35) and the substances addressed in H.R. 4232, would provide a satisfactory and equitable resolution for the remainder of the problem.

We respectfully urge this Committee to act promptly to eliminate this problem.[2]

SUMMARY OF TESTIMONY OF DANIEL E. HALL, VICE PRESIDENT AND GENERAL COUNSEL, WICKLAND OIL CO.

I. An Anomaly Exists in the Tariff Schedules with Respect to the Treatment of Petroleum Products Used to Manufacture Motor Gasoline.

A. Motor gasoline is subject to a tariff of $.0125 per gallon.

B. Imported components of gasoline have been subject to tariffs of over 17 percent ad valorem.

II. This Anomaly Imposes a Substantial Burden on Trade.

A. Importers of gasoline from the Peoples Republic of China and Mexico can be subject to substantial, unanticipated duties.

B. Importers of other gasoline components, such as catalytic naphtha are effectively prohibited from participating in such transactions by unreasonably high and inequitable tariffs.

III. This Inequitable Burden on Trade Generates Anticompetitive Consequences in the Domestic Gasoline Market by Rendering Firms Dependent on Foreign Components Effectively Incapable of Participating in the Market.

IV. This Problem Can Be Resolved Adequately and Equitably By Enacting H.R. 4232 and the Administration's Proposal, Modified to Exclude from Its Coverage Straight-run Naphtha (TSUS Item 475.35) and the Products Covered By H.R. 4232. (A copy of the letter containing this proposal is attached.)

THE U.S. TRADE REPRESENTATIVE,
Washington, DC, May 23, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
Washington, DC.

DEAR DAN: This is in response to your requests for comments on H.R. 4232, a bill to clarify the classification of naphthas and H.R. 5455, a bill to clarify the classification of unfinished gasoline. These bills would have the effect of decreasing the tariffs on certain motor fuel blending stocks which are currently classified as chemical mixtures.

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[1] A copy of this letter is attached for the Subcommittee's convenience.

[2] Attached for the convenience of the Committee is a topical summary of this testimony and the recommendations contained therein. This attachment also includes other information which the Committee has requested.

H.R. 4232 is intended to lower the tariff rate applicable to gasoline blending stocks which contain greater than 5 percent dutiable benzenoid chemicals by weight, the so-called "catalytic naphthas." These materials may contain up to 10 or 15 percent dutiable benzenoids covered under part 1 of Schedule 4 of the Tariff Schedules of the United States (TSUS), but are not economical to process for chemical use. Rather, they are usually blended directly into the gasoline pool because of the octane-enhancing properties of the benzenoid (aromatic) component. Since they exceed the 5 percent limit on benzenoid content and do not meet the definition of any of the petroleum products specified in headnote 1 of part 10 of Schedule 4 of the TSUS, they are subject to the much higher tariff levels of part 1.

H.R. 5455 is intended to modify the classification of gasoline imports which do not meet current U.S. specifications for gasoline but which can be blended with other components to meet these specifications. Since there is no other classification in part 10 of Schedule 4 of the TSUS (petroleum products) which covers such imports, they fall under the more general provisions in part 2 of Schedule 4 and are dutiable at higher rates as chemical mixtures.

The Administration does not object to the intent of H.R. 4232 and H.R. 5455. Both bills are intended to correct anomalies in which an intermediate product is dutiable at a higher rate than the finished product manufactured from it. Such a situation discourages the processing of these intermediate materials and consequent adding of value in the United States. However, the combined effect of H.R. 4232 and H.R. 5455 would be to create another anomaly in which higher-octane, gasoline blending stocks would be dutiable at the lowest petroleum rate and lower-octane blending stocks would be dutiable at the highest rate. This distorts the normal relationship between high- and low-octane motor fuel blending stock in refining economics. We believe it would be more appropriate to establish a single classification for all motor fuel blending stock with a tariff set at the same rate as that for motor fuel.

Consultations have been held among the agencies concerned with this situation as well as with technical experts from industry in order to reach a consensus on the best approach to the problem. Based on these consultations, the Administration suggests establishment of a new tariff line (item 475.27) to be called "motor fuel blending stock", dutiable at 1.25 cents per gallon, the same rate as that applied to motor fuel (item 475.25). Headnote 1 to part 10 of TSUS Schedule 4 would be amended by adding "motor fuel blending stock" to the list of products which may contain up to 25 percent benzenoid chemicals under the petroleum headings. Headnote 2 would be amended by adding the following definition of motor fuel blending stock:

"(c) *'Motor fuel blending stock'* (item 475.27) is any product derived primarily from petroleum, shale oil, or natural gas, whether or not containing additives, which is chiefly used for direct blending in the manufacture of motor fuel."

These modifications will provide an effective resolution of the problems which H.R. 4232 and H.R. 5455 were designed to address. A proposal for these and other conforming changes to part 10 of Schedule 4 of the TSUS have been provided to the Committee staff. The Departments of Commerce, Energy, and Treasury, the Customs Service, and the U.S. International Trade Commission concur in this proposal.

The Office of Management and Budget advises that they have no objection to the presentation of these comments from the standpoint of the Administration's program.

Very truly yours,

William E. Brock.

Congress of the United States,
House of Representatives,
Washington, DC, June 4, 1984.

Hon. Sam Gibbons,
Chairman, House Subcommittee on Trade,
Washington, DC.

Dear Mr. Chairman: It is my understanding that the U.S. Trade Representative (USTR), William Brock, has contacted your Subcommittee regarding my bill, H.R. 4232, to amend the tariff schedules of the United States to clarify the classification of any naphtha described as both a petroleum product and a benzenoid chemical. I am writing to strongly oppose the modifications in this legislation as recommended by USTR.

In introducing this legislation, I sought to correct an anomaly in current tariff laws by which intermediate products, like catalytic naphtha and akylates, are assessed a higher rate of duty than finished products, namely finished gasoline. The present, higher tariff on catalytic naphtha derives from its benzenoid content, even though the product itself is not broken down by users for the benzenoid component. H.R. 4232 takes the logical approach that naphthas which may contain a negligible amount of benzenoids, but which are also petroleum products used as gasoline blendstocks, should be assessed at the same duty rate as is pure naphtha, $.0025 per gallon. USTR's proposed changes—in an effort to correct problems that have arisen with off-specification gasoline—not only ignores this logic, but actually aggravates the problems which my legislation attempts to correct.

By making gasoline blendstock components dutiable at the same rate as finished gasoline, financial incentives for exporting countries to ship these products to the U.S.market will disappear. If the tariff on finished gasoline were the same as that on unfinished motor gasoline components, it would be more advantageous for foreign refiners to export only finished gasoline, which they already produce more cheaply than our own refiners, to the detriment mainly of independent gas producers. As I'm sure you are aware, generally only large U.S. gasoline refiners produce these intermediate substances, but they are unwilling to sell blendstocks like catalytic naphtha and alkylate to independent oil companies and gasoline blenders. The proposal being made by USTR could, therefore, effectively choke off the foreign imports while doing nothing to encourage large refiners to open up the domestic market, thereby seriously threatening the continued viability of small, independent refiners competing in the marketplace. In the end, it will be the American consumer that will suffer from the lack of competition.

I believe that USTR's proposal will also exacerbate another major problem with current tariff laws which my bill seeks to correct. As stated above, catalytic naphtha is now subject to a ridiculously high duty because of its benzenoid content, despite the fact that it is not economically viable to break down the benzenoid components for sale by themselves. Apparently, Customs assigned the higher duty rate based on benzenoid content, ignoring the end-use of this product as an intermediate gasoline blendstock. By lumping together all motor fuel blendstocks into a single definition as "materials chiefly used in direct blending and the manufacture of motor gasolines," I can foresee endless administrative questions arising. Not only will the U.S. Customs Service have to determine "chief use," but such a definition will also further add to a problem of basing tariffs on components rather than on end-use. For example, light naphtha is often, but not solely, imported for motor gasoline blending, and Customs officials would again face the difficulty of determining whether light naphtha would be defined as naphtha and dutiable at $.0025 or as motor fuel blending stocks, dutiable at $.0125. Other, similar products would be equally hard to classify. Under my bill, on the other hand, this type of substance is clearly defined and dutiable at a reasonable rate, based on the concept of end-use.

Again, I strongly urge your Subcommittee's approval of H.R. 4232 without modification, so that logical clarification of our tariff laws in this area can finally be achieved to the benefit of our nation's already threatened, independent refiners and gasoline blenders. Thank you for your attention to this matter, and with every good wish, I am

Sincerely,

JACK BROOKS.

STATEMENT OF JACK A. BLUM, GENERAL COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

Mr. BLUM. Mr. Chairman, I have a prepared statement which I would like to have made part of the record. I would like to highlight the key points in my testimony. Before 1981, prior to decontrol by the Reagan administration, there were no gasoline imports because the U.S. market price level was controlled below the world price level, so the issue simply was not on the table.

Following 1981, there began to be some imports of product to the United States, particularly from countries like the People's Republic of China, which doesn't have many cars but needs the heavy fuel oil, and it becomes an ideal item of export trade for them, and it is a big dollar earner which allows Americans who want to sell goods in China to be able to get dollars back for those goods.

The trade is not tremendously significant in terms of our overall gasoline demand, but it is significant to the Chinese. It is also significant to members of our association who are independent marketers and terminal operators that they have access to world markets and be able to blend stocks from other countries in the event they can't get supply at a reasonable price here.

Now, the anomaly of what Customs did back at the beginning of the year is just hard for us to understand. If the tariff on a finished product, gasoline, is 1.25 cents a gallon, how can the blend stocks be put in protective categories designed to protect manufacturers of aromatic chemicals, and that is exactly what Customs decided to do in a very surprising turnabout.

Chairman GIBBONS. Didn't you all have any notice of that?

Mr. BLUM. Not really. We found out about it as liquidations were proposed and we really didn't have notice.

Chairman GIBBONS. What is your theory about how that happened?

Mr. BLUM. Well, we think that there had been some testing of product and it was below specification and there was, during the summer, a change in the ASTM standard for gasoline, so it may be that they simply decided you don't meet the specification, we are now testing it, therefore, we are going to apply the new ASTM standard and charge you a different tariff rate, but that it was an embarrassment to the administration and indeed the Customs Service, itself, rapidly became clear.

The day this became public was the day the President landed in China to talk about trade and having just clobbered him on textiles and gotten into other difficulties, this was really not an additional piece that the administration needed. The administration proposal is heartily concurred in by the State Commerce and Trade Representative as well as everybody else in Government who has anything to do with it.

Now, what we are looking at here are two things that are equally anomalous, and I want to address myself to them. The Brooks bill, which has been talked about by the subcommittee——

Chairman GIBBONS. Let me ask you, did Customs do this on their own motion?

Mr. BLUM. No petition was filed as far as we can tell.

Chairman GIBBONS. It is spontaneous combustion down there?

Mr. BLUM. Yes; we think so. It may be that there are other people who can address that better.

Chairman GIBBONS. We may need to look at their procedures a little more closely.

Mr. BLUM. Indeed, we not only asked them to check their own procedures, but we said, "Isn't there some way you can approach things more rationally, because here you want to tax a blend stock as a petrochemical, which is under a tariff designed to protect the petrochemical industry when you know perfectly well it is going to be used as motor fuel." It is a lesser component of something coming in at a 1.25 tariff, and that is just crazy.

Well, now we have the further anomalous situation. Mr. Brooks has offered a bill which is perfectly noncontroversial, certainly as far as we are concerned, to take some of those gasoline blend stocks and refer to them as chemicals; naphthas which can come in at a quarter of a cent. There has been no protest, as far as I know, to the committee about bringing in those catalytically reformed naphthas at a quarter of a cent. They are one of the possible components that we would bring in for blending. They don't have to be refined further, and that is noncontroversial.

What we are saying is please put the rest of those blending components in the 1.25 category, a penny and a quarter category, and keep us out of this aromatic chemical protection game.

We note with interest, and perhaps they will explain their point of view on all this in a minute, the refiners who think that this amendment shouldn't come to pass have not protested the Brooks change but seem to worry about just a select number of components of gasoline and believe there ought to be more protection there.

Chairman GIBBONS. How did you happen to find out that they were about to change this?

Mr. BLUM. Because they sent notices to people who had imported cargos, and we gradually went into Customs and said "What the hell are you people doing?" And they came up and said, "Well, we decided it can't be used as a motor fuel until you do something to it. Ergo, it is not a motor fuel within the meaning of the tariff schedule; therefore, we have to classify it as a chemical compound."

Chairman GIBBONS. Now I believe we hadn't been importing this very long because the price of gasoline had been fixed below the market I believe you said.

Mr. BLUM. Well, we have been importing it for 2.5 or 3 years. So they have a bit of experience, and it isn't exactly the first cargo, and this was not exactly a new issue for them because several people have, in fact, brought cases arguing that the blend stocks were naphthas rather than gasoline, seeking the quarter of a cent treatment that naphtha gets as opposed to the penny and a quarter for gasoline. So they knew about the controversy and the fact it was not on specification.

We think it may have to do with a summer change to ASTM standard, but why they waited from summer until January or February to begin dealing with it, we don't know, and why they did it without really telling the industry in a kind of public noticed fashion in the Federal Register, we simply don't know.

We went to them and we said, "Look, we want you to suspend your approach here based on prior consistent practice," and that request, we understand, is being looked at by the Customs Service right now for those cargos which have been brought into question.

But our request is this: Notwithstanding the claims of our good friends in the small refining industry with whom we compete, fairness and common sense dictate that something that is brought into the country to be used to make gasoline ought to be taxed at least at the same rate as the gasoline itself.

And all that is going to happen is if you create this situation, you cut us out of importing the blend stock, but the majors will either be able to get the finished gasoline or finish it themselves offshore, and we will be out of the loop as customers. And we think that that is anomalous and ridiculous.

And the other question is, if our friends in the reining industry are so opposed to our importing other blend stocks, why are they perfectly willing to let naphtha in at a quarter of a cent a gallon?

Chairman GIBBONS. That is an interesting question. I don't know the answer to that at all.

Mr. BLUM. Well, we would be delighted to have them come up here and answer that.

There is a larger issue, Mr. Chairman, which I think is behind their concern, and it is an issue which is really not appropriately addressed in this context. The larger issue is the fact that around the world people are building large export refineries and we can see in 2 or 3 years that there will be substantial refining capacity overseas and substantial competition with the domestic industry from those foreign sources.

But that is really an issue that goes to the entire question of the tariff level for gasoline. It doesn't have to do with the Customs Service wandering off the ranch on the selection of imported blend stocks, and that is an issue which we will be prepared to debate when the issue is on the table. And then the issue will be finished product of all kinds.

[The prepared statement follows:]

STATEMENT OF JACK A. BLUM, GENERAL COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

My name is Jack Blum. I am the General Counsel of the Independent Gasoline Marketers Council, a trade association of non-branded independent retailers of motor gasloline. I am pleased to have the opportunity to appear before you to address the issue of the tariff classification for imports of low octane gasoline. In particular, I refer to gasoline imported from the People's Republic of China. H.R. 5455, a bill to clarify the classification of unfinished gasoline, does not appear to adequately resolve the problem. Further amendment to this bill is therefore warranted.

Gasoline from the PRC has entered the United States since 1981. This gasoline, as well as similar products from other foreign nations such as Mexico, have been classified as motor fuel under Tariff Schedules of the United States (TSUS) Item No. 475.25. Under this classification, duties are assessed at the rate of 1.25 cents per gallon. The Customs classification of this item throughout this period has been established and uniform. To our knowledge, imports of gasoline from the PRC have never been classified under any other category. Now, however, the Customs Service proposes to reclassify this product as a chemical mixture under Schedule 4, Part 2, Subpart E. The reationale is that the octane level of Chinese gasoline at the time of importation is below the standard for motor fuel set by the American Society of Testing and Materials (ASTM). In spite of its intended use as gasoline, certain additives must nevertheless be provided to this gasoline after its importation into the United States to meet U.S. specifications. As a result, the Customs Service is of the view that this product cannot be classified as motor fuel.

Under the proposed new classification, the tariff rate for gasoline from the PRC would be assessed at 5% or the highest rate applicable to a component material. As some gasoline from the PRC contains tetra ethyl lead, with a duty rate of 11.1% gasoline imports from the PRC would be assessed at that higher rate. This rate is equal to approximately 8.5 cents per gallon.

Mr. Chairman, I don't need to explain to you what the impact would be of a duty increase of such dramatic magnitude. I am not exaggerating when I say that such a result will have a major impact on the ability of independent terminal operators and marketers to compete aggressively with the large integrated major oil companies. The independent terminal operators and marketers of refined petroleum products are struggling to compete and to survive against the major integrated oil companies. These independents have been struggling to meet the competition at the retail level. Yet access to independent sources of product are absolutely critical to their ability to compete effectively. To be viable, the independents must have assurances of sufficient supply at a competitive price. Although not large, the supply of foreign gasoline keeps downward pressure on wholesale gasoline prices.

Many independent refineries rely, to a considerable degree, on the importation of intermediate feedstocks. These foreign sources of supply are essential to them as they attempt to meet major competition and deal with the high cost of crude.

The proposed tariff reclassification and the resulting large duty rate increase would be catastrophic. It would, in one administrative stroke, make imports of motor fuel blending stock uneconomical. Independent marketers would lose an important source of product. Prices at the retail level particulary would rise. But imports of finished gasoline would continue at the old rate and the issues of protection of domestic refinery capacity will not have been dealt with equitably.

The proposed reclassification would also have very adverse effects on our bilateral trade relations with the PRC. Chinese exports of motor fuel blend stocks to the United States constitutes its largest single category of exported product to the U.S. The PRC and other foreign nations, such as Mexico, will be hard pressed to comprehend the intricacies of Executive Branch action that permits one of its agencies to suddenly and dramatically disrupt trade in a principal export item. In all likelihood, such action will adversely impact on China's willingness to purchase U.S. exports. Our trade relations will deteriorate.

Mr. Chairman, we do not seek to lower the duty rates on imported gasoline. Nor do we seek protection from such imports. We only seek to maintain that duty rate structure which has consistently been applied to such product up until this time. It makes no sense to classify this product as a chemical mixture. It makes no sense to increase the duty rate nine hundred percent while continuing to allow the finished product to enter at the old rate. It makes no sense to dramatically cut off an important source of supply for independent refiners and marketers who play such a vital role in maintaining price competitiveness of gasoline at the retail level. It makes no sense to antagonize the Chinese on an issue tht makes no sense.

Mr. Chairman, we have no objection to the approach adopted in H.R. 5455. But this bill does not appear to resolve the classification problem for low octane gasoline such as that imported from the PRC and Mexico. We therefore urge you to consider amending this bill in the manner suggested by the Administration. Such an amendment would establish a new tariff category known as "motor fuel blending stock" and would cover any product that is chiefly used for direct blending in the manufacture of motor fuel. We urge you to take this action immediately. I do not believe that I understimate the importance of correcting this tariff classification problem now.

Thank you very much.

Chairman GIBBONS. Well, thank you very much.

Mr. HALL. Mr. Chairman, I also presented a written testimony.

Chairman GIBBONS. We will include that in the record.

Mr. HALL. Thank you very much.

Chairman GIBBONS. Thank you.

Now we will hear the other side of the question, American Independent Refiners Association. You seem to have a number of people with you, Mr. Langdon. Go right ahead, sir.

STATEMENT OF HARRY L. LANGDON, EXECUTIVE VICE PRESIDENT, TOSCO CORP., ON BEHALF OF AMERICAN INDEPENDENT REFINERS ASSOCIATION, ACCOMPANIED BY JOHN T. DOYLE, EXECUTIVE ASSISTANT TO THE VICE CHAIRMAN, ASHLAND OIL CO.; AND RAYMOND F. BRAGG, EXECUTIVE DIRECTOR, AMERICAN INDEPENDENT REFINERS ASSOCIATION

Mr. LANGDON. Mr. Chairman, my name is Harry Langdon, and I am executive vice president of Tosco Corp. I am testifying today on behalf of a broad cross-section of the U.S. petroleum independent refining industry. I am accompanied by John T. Doyle, who is executive assistant to the vice chairman of Ashland Oil, and by Ray Bragg who is the executive director of the American Independent Refiners Association, AIRA. AIRA, which is the only trade association which speaks exclusively for independent refiners, consists of

28 members and accounts for nearly one-third of the Nation's independent petroleum refining industry. And I might note here that Ashland Oil Co. is not a member of the AIRA, as was stated on your sheet.

Chairman GIBBONS. All right.

Mr. LANGDON. We appreciate this opportunity to present our views to the subcommittee. With the chairman's permission, I will make a brief statement on behalf of our panel and then each of us will be available to respond to any questions you may have. I have provided the subcommittee with copies of my prepared statement, which I request to be included in the record of these hearings. I would also request that the record be kept open for the receipt of some detailed supporting data which we are preparing but have not yet completed.

Chairman GIBBONS. When do you think that will be done?

Mr. LANGDON. I would hope by Friday afternoon, if not by Monday.

Chairman GIBBONS. We would certainly be happy to.

[The following was subsequently received:]

American Independent Refiners Association

June 25, 1984

The Honorable Sam Gibbons, Chairman
House Subcommittee on Trade
1111 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed are attachments showing the dramatic increase in U. S. imports of gasoline and products since January 1983 which was reported in our testimony to the Subcommittee on June 21, 1984. To support our testimony that the ability of foreign refiners to undercut the U. S. refining industry is not a function of superior plants or greater operating efficiencies, a chart comparing the complexity and refining yields of U. S. and relevant foreign refining industries is also enclosed. The panel wishes to include this data in the hearing record.

In response to your request for any comments which AIRA might offer regarding the Brooks bill (H.R. 4232), a preliminary survey of the trade association's officers shows no support for the bill. At the time the Executive Committee of the Association voted to oppose the Glickman bill (H.R. 5455), the Brooks bill was briefly discussed but was not considered appropriate for a position by the Association in view of its apparent limited impact on association members.

Very truly yours,

Ray Bragg

Ray F. Bragg, Jr.
Executive Director

RFBjr/jam
Enclosures

114 Third Street, S.E. Washington, D.C. 20003 202/543-8811

U. S. Imports* of Gasoline & Naphtha

(MB/D)

1983	Leaded Gasoline	Unleaded Gasoline	Blending Components	Naphtha	Total
Jan.	80	9	17	14	120
Feb.	54	17	51	7	129
Mar.	115	28	25	25	192
Apr.	159	56	12	17	244
May	188	50	22	26	285
June	113	59	31	26	228
July	115	71	20	28	234
Aug.	78	87	31	24	220
Sep.	118	52	33	43	245
Oct.	94	149	31	35	308
Nov.	106	85	42	51	284
Dec.	88	65	43	17	217

1984					
Jan.	112	81	20	9	220
Feb.	153	69	62	57	341
Mar.	182	100	74	37	392
Apr.	162	83	54	58	357

Source: API Publication of DOE, ERA-60 data.

*Includes imports into 50 states only. Excludes imports from foreign trade zones.

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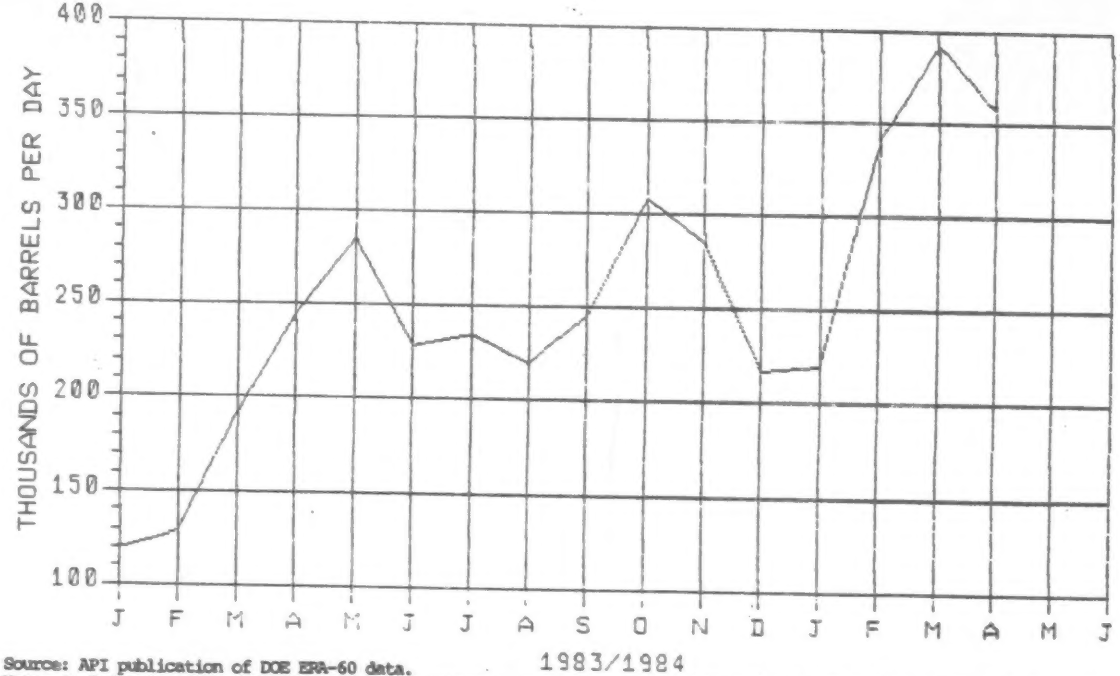
U.S. GASOLINE IMPORTS



Source: API publication of DOE ERA-60 data.
Note: Includes imports of finished gasoline, blending components and naphtha into the 50 states. Excludes imports into Puerto Rico and from foreign trade zones.

ESTIMATED REFINERY YIELDS

	Price $/B (1)	U.S.	Mexico	Venezuela	Brazil	China/ Rumania
Complexity		9.3	5.6	4.7	4.5	2.5
Product Slate						
LPG	18.27	2	2	2	2	1
Naphtha	30.24	-	2	6	7	10
Leaded Gasoline	30.76	19	24	17	15	6
Unleaded Gasoline	31.50	36	15	11	10	-
Jet A	32.34	6	7	8	8	10
Distillate	31.92	21	20	20	20	20
Low Sulfur Resid	28.50	5	12	15	19	42
High Sulfur Resid	27.50	4	15	18	15	6
Other	30.05 (2)	6	-	-		1
Fuel	0 (3)	10	8	7	7	5
TOTAL		109	105	104	103	101
VALUE OF PRODUCTS, $/B		30.52	29.47	29.07	28.76	28.59
SPOT WTI, $/B		30.05	30.05	30.05	30.05	30.05
GROSS MARGIN, $/B		0.47	(0.58)	(0.98)	(1.29)	(1.46)

(1) U.S. Gulf Coast Spot 6-15-84, Platts Oilgram
(2) Assumed same as West Texas intermediate (WTI) crude spot price
(3) Consumed in refining process

EXPLANATION: The average complexity of the refining industries in the respective countries was calculated using January 1, 1984 capacity data as reported in the Oil and Gas Journal and the Nelson's "complexity factor", which is generally accepted in the refining industry. The average refined product yield for each country was estimated by using typical yields for refineries of varying complexity.

Mr. **Langdon**. Petroleum refining is one of the Nation's basic manufacturing industries and is a major source of the energy which has fueled our national growth and economic development. The independent sector of this industry has provided important innovations and has supplied some markets which are not served by the major integrated oil companies. Independent refiners are the principal suppliers to independent marketers and retailers, thereby facilitating competition at the pump by providing consumers with a competitive alternative to the integrated majors.

As members of this important independent refining industry, we strongly oppose H.R. 5455 or any similar proposal to relax the tariff treatment of imported gasoline which is below U.S. specifications for use in internal combustion engines. The committee should recognize the complexity of this issue and its potential detrimental effect on the domestic refining industry. Reducing the duty on subspecification imports would encourage further imports of this material at a time when a significant portion of the industry is in economic difficulty and faces further investment to produce gasoline that will meet probable tightening of U.S. standards.

Imports of gasoline and gasoline blending components have more than tripled since January 1981, and imports during the first quarter of this year were more than double the volume during the same period last year. At the time of decontrol, gasoline imports were about 100,000 barrels a day, coming in primarily from free trade zones. The subsequent sharp increase in imports has occurred while the U.S. refining industry has been operating at well below 75 percent of capacity and petroleum demand is down substantially from historic levels. Although published import statistics do not normally distinguish subspecification gasoline from other gasoline and gasoline components, it would appear that subspecification material is contributing significantly to the growing problem of gasoline imports.

In effect, these mounting imports are resulting in the exportation of domestic refining capacity. If the trend continues, the ability of this Nation to meet its own product demand will be substantially impaired, and we could find ourselves as dependent on imported products as we have become dependent on imported crude oil, a condition which would give the Nation even less flexibility to deal with crude oil shortages. In economic terms, each barrel of gasoline imported into the United States backs out a barrel of domestically refined gasoline, with a consequential loss of jobs and income.

I want to emphasize that the current trend of increasing gasoline imports is not the result of an obsolete and complacent domestic industry being outstripped by modern and aggressive foreign competitors. On the contrary, the U.S. refining industry is the most sophisticated and efficient in the world. It has invested in modern and sophisticated facilities which are far superior in complexity and conversion capability to the relatively simple refineries in the principal exporting countries.

Foreign refineries, on the other hand, typically reflect a much lower investment in facilities designed primarily to produce heavier fuel oil products. Subspecification gasoline is produced principally as a byproduct of these relatively simple refineries in countries where the primary fuel requirements are distillates and fuel oils, not gasoline. This creates a strong motivation to sell the surplus gasoline abroad at whatever price is necessary to assure a market. In addition, the products from foreign plants do not carry the high cost of U.S. labor rates and U.S. standards for health, safety, and environmental protection.

In summary, we oppose H.R. 5455 and the related proposals because they do not address the critical U.S. trade policy issues which are involved. These issues are the level of national dependency on imported petroleum products which is acceptable and the extent to which the United States is willing to encourage the importation of undervalued products from substantially less efficient foreign refiners at the expense of highly efficient, sophisticated domestic refiners which must obtain a realistic return on petroleum products they produce.

Before we close, we would like to point out a few inaccuracies that were made in the testimony this morning.

[The prepared statement follows:]

STATEMENT OF HARRY L. LANGDON ON BEHALF OF THE AMERICAN INDEPENDENT REFINERS ASSOCIATION

Mr. Chairman and Members of the Subcommittee, my nane is Harry L. Langdon, and I am Executive Vice-President of Tosco Corporation. I am testifying today on behalf of a broad cross-section of the independent U.S. petroleum refining industry. I am accompanied by John T. Doyle, who is Executive Assistant to the Vice-Chairman of Ashland Oil, Inc., and by Raymond F. Bragg, who is Executive Director of the American Independent Refiners Association [AIRA]. AIRA, which is the only trade organization which speaks exclusively for independent refiners, consists of 28 member companies and accounts for nearly one-third of the Nation's independent petroleum refining industry.

We appreciate this opportunity to present our views to the Subcommittee. With the Chairman's permission, I will make a brief statement on behalf of our panel and then each of us will be available to respond to any questions you may have. I have provided the Subcommittee with copies of my prepared statement, which I request to be included in the record of these hearings. I would also request that the record be kept open for the receipt of some detailed supporting data which we are preparing but have not yet completed.

Petroleum refining is one of the Nation's basic manufacturing industries and is a major source of the energy which has fueled our national growth and economic development. The independent sector of this industry has provided important innovations and has supplied some markets which are not served by the major integrated oil companies. Independent refiners are the principal suppliers of independent marketers and retailers, thereby facilitating competition at the pump by providing consumers with a competitive alternative to the intergrated majors.

As members of this important independent refining industry, we strongly oppose H.R. 5455 or any similar proposal to relax the tariff treatment of imported gasoline which is below United States specifications for use in internal combustion engines. The Committee should recognize the complexity of this issue and its potential detrimental effect on the domestic refining industry. Reducing the duty on sub-specification imports would encourage further imports of this material at a time when a significant portion of the industry is in economic difficulty and faces further investment to produce gasoline that will meet probable tightening of U.S. standards.

Imports of gasoline and gasoline blending components have more than tripled since January 1981, and imports during the first quarter of this year were more than double the volume during the same period last year. This sharp increase in imports has occurred while the U.S. refining industry has been operating at well below 75 percent of capacity and petroleum demand is down substantially from historic levels. Although published import statistics do not normally distinguish sub-specification gasoline from other gasoline and gasoline components, it would appear that sub-specification material is contributing significantly to the growing problem of gasoline imports.

In effect, these mounting imports are resulting in the exportation of domestic refining capacity. If this trend continues, the ability of this Nation to meet its own product demand will be substantially impaired and we could find ourselves as dependent on imported products as we have become dependent on imported crude oil, a condition which would give the Nation even less flexibility to deal with crude shortages. In economic terms, each barrel of gasoline imported into the United States backs out a barrel of domestically refined gasoline, with a consequential loss of jobs and income.

In competitive terms, increased penetration by imports into the domestic market is having a particularly adverse impact on independent refiners. Gasoline importers sell primarily to independent marketers, which are the traditional customers of the non-integrated refining sector. Our experience indicates that a significant portion of the traditional gasoline market of independent refiners has now been lost to imported products.

I want to emphasize that the current trend of increasing gasoline imports is not the result of an obsolete and complacent domestic industry being outstripped by modern and aggressive foreign competitors. On the contrary, the U.S. refining industry is the most sophisticated and efficient in the world. It has invested in modern and sophisticated facilities which are far superior in complexity and conversion capability to the relatively simple refineries in the principal exporting countries. These investments have been necessary to meet the domestic demand for premium light products and to comply with stringent U.S. environmental standards.

Foreign refineries, on the other hand, typically reflect a much lower investment in facilities designed primarily to produce heavier fuel oil products. Sub-specification gasoline is produced principally as a by-product of these relatively simple refineries in countries where the primary fuel requirements are distillates and fuel oils, not gasoline. This creates a strong motivation to sell the surplus gasoline abroad at whatever price is necessary to assure a market. In addition, the products from foreign plants do not carry the high cost of U.S. labor rates and U.S. standards for health, safety, and environmental protection.

Sub-specification components are sold primarily in the U.S. leaded gasoline market and must contain lead or have lead added in order to burn adequately in gasoline engines. Domestic refiners, on the other hand, have made substantial investments to upgrade their plants in order to produce unleaded gasoline which satisfies U.S. environmental standards. It would be a serious mistake to encourage the importation of leaded gasoline, to the economic disadvantage of domestic refiners, when many of these same refiners must make substantial additional investments to meet stringent U.S. limits on the amount of leaded fuel they produce.

For all of these reasons, we must express our strong opposition to H.R. 5455 or any other proposal to the extent it would reduce the duty on sub-specification products which are not suitable for use as motor fuels. While H.R. 5455 purports to be only a "clarification," it would in fact constitute a major departure from the current tariff treatment of gasoline imports and would pose an increased threat to the continued viability of independent U.S. refiners.

Similarly, the proposal to apply the relatively low motor fuel duty to all gasoline blend stocks would also aggravate the competitive inequity facing U.S. refiners by encouraging imports of sub-specification materials. This proposal ignores the differences in market factors and economic conditions which enable foreign refiners to undercut the U.S. industry. Furthermore, advocates of this change have erroneously asserted that a lower tariff on low-octane "intermediate materials" would allow value to be added by U.S. refiners. In fact, most imported blend stocks are not subjected to further processing in the United States but are merely upgraded through the use of additives.

In summary, we oppose H.R. 5455 and the related proposals because they do not address the critical U.S. trade policy issues which are involved. These issues are the levels of national dependency on imported petroleum products which is acceptable and the extent to which the U.S. is willing to encourage the importation of undervalued products from substantially less efficient foreign refiners at the expense of highly efficient, sophisticated domestic refiners which must obtain a realistic return on petroleum they produce.

SUMMARY

A broad cross-section of the U.S. independent petroleum refining industry strongly opposes H.R. 5455 or any similar proposal to relax the tariff treatment of imported gasoline which is below U.S. specifications for use in internal combustion engines. Sub-specification materials appear to be contributing substantially to the growing problem of gasoline imports.

In recent years a sharp increase in gasoline imports has occurred while the U.S. refining industry has been operating at well below 75 percent of capacity and petroleum demand is down substantially from historic levels.

These mounting imports are resulting in the exportation of domestic refining capacity and could impair the ability of the Nation to meet its own product demand. If this trend continues, we could find ourselves as dependent on imported products as we have become dependent on imported crude oil, a condition which would give the Nation even less flexibility to deal with crude oil shortages.

The ability of foreign refiners to undercut the U.S. industry is not a function of superior plants or greater operating efficiencies. In fact, the U.S. industry has invested in modern facilities and technology in order to meet the domestic demand for premium light products and in order to comply with stringent U.S. environmental standards. Foreign export refineries typically reflect a lower investment in facilities to make heavier fuel oil products for local markets, allowing surplus by-product gasoline to be imported to the United States at whatever price will assure a market.

H.R. 5455 and the related proposals inadequately address critical U.S. trade policy issues. The issues are what level of U.S. dependency on imported petroleum product is acceptable and to what extent the U.S. is willing to support and encourage the importation of undervalued products produced by substantially less efficient foreign refiners at the expense of highly efficient, sophisticated U.S. refiners which must obtain a realistic return on petroleum products produced.

Mr. BRAGG. Mr. Chairman, I was interested in noting the comments that were made by the administration panel regarding the majority support that the proposals had in both the major oil industry and the independents. I am delighted to learn that it is a noncontroversial issue and that the industry supports it.

I wonder why in the world we were sitting here as a panel coming up to testify against it. That simply is not true. A broad cross-section of the independent refineries is very much opposed to Mr. Glickman's amendment.

Chairman GIBBONS. How about to Mr. Brooks'? Are you familiar with Mr. Brooks'?

Mr. BRAGG. The focus that we made was on the Glickman amendment because it appeared to have the most traumatic economic impact on this industry. We have not, in the short time that we have had to prepare for this hearing, had an opportunity to examine the Brooks amendment.

If the chairman would like, we would be happy to do that and get back to him at some time in the future.

Chairman GIBBONS. I have been told that Brooks seemed to be noncontroversial, and I frankly don't know the difference, and if it is just because you haven't examined it, I certainly can respect you for not being prepared to talk about it. We would always like to solve problems, and we like to solve them as best we can and as intelligently as we can.

Mr. LANGDON. Well, we are representing some 30 companies, so it will take some time.

Chairman GIBBONS. I understand, and each one of them may have a slightly different view of the situation. So just do the best you can on that, and let us know as quickly as you can.

[The information appears on p. 763.]

Mr. LANGDON. Another point this morning. We understood that the administration stated that the current tariff treatment discourages domestic producers, and we believe they mean by producer a domestic refiner, and that just is not so because the material that is coming in is not used in the refining process. It is strictly used in blending by others, so it is not used at all by us.

Mr. DOYLE. Mr. Chairman, with your permission, I too would like to address a couple of inaccuracies, or at least mischaracterizations of the problems.

Chairman GIBBONS. Fine. You are Mr. Doyle of Ashland, is that correct?

Mr. DOYLE. That is correct.

This morning one of the administration witnesses characterized 5455 as simply a technical correction that would return us to the status quo. I think from what you have heard so far this morning and this afternoon, there is quite a bit of confusion on what is the status quo. What he did say was that 5455 would return us to a tariff on these blend stocks of 1.8 percent. I don't think you will find that figure in the tariff schedule.

I assume what he means is 1.25 cents a gallon, which at today's prices or today's value, that would come out to about 1.8 percent; 1.25 cents a gallon is the duty on finished gasoline, and we are talking about subspecificationed stocks.

Chairman GIBBONS. You are talking about essentially an unfinished product?

Mr. DOYLE. Right.

The Commerce Department witness went on to say later on that it was never the intent to duty these unfinished gasolines at the same level as finished gasoline. So I wanted to make that correction that I think it does misstate the problem, and I hope you will understand the point we ~~are trying~~ to make.

Second, I think it is important to point out that prior to this change in Customs Department practices, there were relatively small amounts of imports. There were some, but it has grown substantially in recent months, and that is what we are concerned about, and there are indications that as these export refineries offshore come onstream, the problem will be even greater.

Chairman GIBBONS. Let me ask you. Did you all suggest to Customs that they ought to look at their classification on this product? Were you in contact with them?

Mr. LANGDON. I can only speak for Tosco and Tosco did not.

Chairman GIBBONS. How about the association, any written, verbal, or oral communication? Any other contacts?

Mr. BRAGG. We have had some oral discussions with members of the administration. I have not talked with any Customs officials.

Chairman GIBBONS. What I am worried about, of course, is that free speech is a right guaranteed under the Constitution, and that is perfectly all right. I am not making any accusations, but we have had it raised before in these hearings, and perhaps it is my fault that we haven't paid more attention to it, that Customs can get pretty informal about the way they change some of these classifications around, and that is beginning to worry me. I have run into it before.

I was just wondering if you all had made any kind of oral representation to the people that make these decisions. I am not going to embarrass you or anybody else by asking you who you talked to or anything else?

Mr. **Bragg**. I will be happy to tell you, I spoke with some of the administration officials that are here in the room today, but it was after the Customs Service changed its policy.

Chairman **Gibbons**. Ordinarily, Customs, I don't think pays that much attention to—the type of import, to them an import is an import. They look at it pretty closely before they radically changed the duty on a product, and I just wondered what got them going on that question.

Mr. **Bragg**. I understand your interest. I would say all of my discussions and all of the Trade Association discussions were held after the Customs people changed their classification. To my knowledge, the Trade Association had no discussion with Customs officials prior to that decision.

Chairman **Gibbons**. You are not aware of anybody else's discussion?

Mr. **Bragg**. No, sir, I am not.

Chairman **Gibbons**. We have to sort of decide it was spontaneous combustion over at Customs, I guess. Maybe before we let them have any more of those kinds of spontaneous combustions, we ought to put some kind of restraint on them because they could just as soon change these things the other way around.

What I am interested in is that people have an opportunity to come in and be heard more than the actual decision. The process is something that worries me as much as the actual decision. If you have got a bad process, you can get bad decisions both ways.

Mr. **Bragg**. I think the Trade Association will support you in that view, Mr. Chairman. We would like to make sure that the process is open and as much as anybody since it obviously influences the members.

Chairman **Gibbons**. Well, this is just the second case recently that I have run into this thing.

Well, thank you very much for your testimony. I appreciate it.

All right, we will next go to Congressman Wyden.

Ron, if you would come forward, we would be happy to hear you now. I notice you have with you some Port of Vancouver officials and some officials of Pacific Northwestern International Trade Association and Columbia River Customs Brokers and Forwarders Association. You may lead off.

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. **Wyden**. Thank you very much, Mr. Chairman. With your permission, they will come forward at this time.

Mr. Chairman, I want to thank you for your graciousness in including us in this hearing today. I know that the schedule of the subcommittee is extremely busy, that you have been dealing with steel and a variety of other extremely complicated matters and I just want to tell you how much I appreciate this.

Chairman **Gibbons**. We have got a full workload and unfortunately we had a better attendance this morning than we do in the afternoon. I don't know what happens around here in the afternoon, unless the members are raptly paying attention to the debate on the floor right now. That's a problem we have.

Mr. WYDEN. It is much appreciated, Mr. Chairman. I also want to say that the staff has been extremely helpful as well.

H.R. 5625 is a commonsense low-cost initiative that will streamline the Customs bureaucracy, save time and money for shippers and traders operating on and near the Columbia and Snake Rivers and identify the Columbia-Snake River system for what it truly is—a unique trading and transportation system.

The Columbia-Snake River system is a navigable waterway extending 465 miles inland from the Pacific Ocean. The system runs through Oregon, Washington, and Idaho but serves the transportation needs of a much larger area extending throughout the Northwest and into the Midwest, the Northeast and the Southeast portion of the United States and Canada.

This legislation is necessary because the Customs Service has carved our region into three customs districts, reporting to two different customs regions—Los Angeles and Chicago. To look at the current customs districts map, one would think that the ports of the Columbia-Snake system have no more connection with each other than New York City has with Portland.

Unfortunately, as we will demonstrate today, that is not the case. The port districts and trading areas along the system are indelibly intertwined. Fifty percent of the export grain coming from Lower Columbia River elevators is shipped by barge.

About 40 percent of the petroleum products received at Portland are shipped upriver by barge. Nearly 30 percent of the Lower Columbia container volume moves to or from those ports by barge on the shallow-draft portion. In fact, except for a few experimental runs on the Mississippi, the Columbia-Snake system is the only U.S. shallow-draft waterway handling barged containers.

With the obvious interdependency among the system ports, I have not been able to get a satisfactory answer to the simple question of,

> Why should the Port of Lewiston, just over the eastern Washington border in Idaho, be a part of the Great Falls District and Chicago Region, when the Port of Clarkston, which is directly opposite Lewiston on the Washington side of the Snake River, reports and answers to the Seattle District?

The simple fact is that current customs district boundaries completely ignore the natural geographic boundaries and commercial cargo routes of the Columbia-Snake system.

And this is not just an academic problem. It is creating extra work for customs officials, which causes delays for shippers and producers, which costs the Government and the private sector money.

Let me provide a specific example. A shipment of grain is imported from Canada. It is loaded on barges at the Port of Lewiston in Idaho and then shipped downriver, where it will be inspected and cleared in Portland. But there is one problem. The Port of Lewiston is in the Great Falls District and the Chicago region. So Portland customs officials must spend time coordinating the shipment's documentation with Great Falls customs officials.

Obviously, such bureaucracy is illogical and unnecessary. We think the Columbia-Snake system needs and deserves a customs district that will cut down on bureaucracy, thus saving the Government and the private sector money, that can serve as a new marketing tool for exporters throughout the West seeking to tap Pacific Rim markets, and that will recognize the area as a unique trade zone and transportation system. H.R. 5625 will achieve these goals.

Finally, I would note that H.R. 5625 has garnered widespread and bipartisan support among my Northwest colleagues. All the members representing the proposed new district—Congressman AuCoin, Congressman Foley, Congressman Robert Smith, Congressman Bonker, Congressman Morrison, Congressman Craig and Congressman Hansen have all cosponsored this measure. In addition, Congressman Mike Lowery, who represents the Seattle area, is also a cosponsor.

I want to wrap up with one more point, Mr. Chairman. I was not here but as I understand it this morning customs officials said that their main argument about this bill was there are two ports of entry on the Canadian border. They contend, apparently that given East Port and Port Hill, the two ports on the border, that if, as we do in the legislation, create the port of entry in Boise, that somehow that would be confusing and inconvenient.

I feel very strongly, Mr. Chairman, that that argument just is not correct. There are several reasons why it is not correct. First is that these would be different kinds of ports. East Port and Port Hill essentially are border-control types of ports. We are talking essentially about Boise's trade activities being focused to the west. I would also point out that we have the complete support of the elected officials in Idaho—the Lieutenant Governor, the Governor, and the entire Idaho congressional delegation. I would like to make as part of the record a letter from David H. Leroy, the Idaho Lieutenant Governor, who is chairman of the Idaho District Export Council, Mr. Chairman.

Chairman **Gibbons**. I will be glad to put that in.

Mr. **Wyden**. I thank you for that courtesy. This letter and the support of the Idaho delegation make a clear point. I don't think you would see all the elected officials from Idaho and the Members of Congress and the Governor and the Lieutenant Governor supporting this legislation so strongly if Customs was right, if this initiative would cause confusion and if it would prove to be inconvenient.

You wouldn't see those key Idaho officials supporting it if their federal employees or their businesses were to run into confusion. So I disagree, Mr. Chairman, with that point that was made by the Customs people.

I will wrap up my statement, Mr. Chairman. We are very fortunate to have three well-respected leaders in the Northwest trade maritime communities who have come here today to further explain the need for this legislation. On my right is Mr. Gary Conkling, Government Relations Director for Textronix, Inc., and President of the Pacific Northwest International Trade Association.

We ought to have the record show Mr. Conkling is my former administrative assistant, so I'm very partial to his views and the record might reflect that. On my immediate right, Mr. Newman of the Newman-Wilson Co., a leading freight forwarding operation. And on my left is Mr. Benson Murphy, the executive director of the Port of Vancouver, WA.

Mr. Chairman, thank you again for providing this opportunity to consider this legislation which is a high priority for me, and I will now turn to my friends here for their insights.

Chairman GIBBONS. Let me talk about the leadership in pulling all this together before you start. I understand that the customs folks don't particularly care for Members of Congress to get involved in these issues, and I pointed out that the Port of Tampa district was created in 1859 by an act of Congress, so it's not unprecedented to have this happen. I was not here at that time. That's how it came about. There was a petition before the Florida Legislature, and you are to be commended for doing this. This is not something we have been doing recently, but we may have to get back to it. I want to commend you for the help you give us always.

I would say to Mr. Conkling, your former colleague: I hope you do as well as mine did. I won't tell you how much money he made last year, but he sure makes me look like a pauper. So good luck.

Go right ahead, sir, with the other witnesses.

Mr. WYDEN. Why don't we begin with Mr. Conkling and go right down the line.

STATEMENT OF GARY L. CONKLING, MANAGER, GOVERNMENT RELATIONS TEKTRONIX, INC., AND PRESIDENT, PACIFIC NORTHWEST INTERNATIONAL TRADE ASSOCIATION

Mr. CONKLING. Thank you, Mr. Chairman. I perhaps ought to get the address of your former administrative assistant; I'm not doing that well.

Chairman GIBBONS. It just takes a little time. Be patient.

Mr. CONKLING. For the record, my name is Gary L. Conkling. I'm manager of government relations for Tektronix, Inc., located in Beaverton, OR. I am apppearing here today in support of H.R. 5625 as President of the Pacific Northwest International Trade Association, which is known as PNITA.

PNITA is a protrade policy group that represents more than 200 corporate and affiliate members in Oregon, Washington, and Idaho. Our members include some of our region's largest manufacturers, small and medium-size businesses, banks, insurance companies, freight forwarders and customhouse brokers, transportation companies, ports and international marketing organizations. In short, our members cover the full range of international commerce.

PNITA was organized in the belief that expanded trade is the best chance our region has to diversify and to rebuild its economy. Our region is remote from American population centers and deregulation of transportation systems has placed our region at a competititive disadvantage in serving those population centers, especially for our many bulk commodities.

It is natural, therefore, that our region has looked to our other neighbors on the Pacific Rim for new business opportunities—and have found them.

The Pacific Northwest is blessed with one of the world's finest river systems—the Columbia/Snake waterway which is an interdependent deep and shallow draft system that extends all the way inland to Lewiston, Idaho.

This vast waterway, which affords shippers a grade-level transportation network on road, rail and water across the Cascades, is truly a gateway to the Pacific Rim and other major world markets. It is our pathway to trade and its boundaries define our region and our natural trade area.

It seems logical to our trading community that government agencies deistgned to serve this region reflect the boundaries of this region. That's why we support H.R. 5625, which would expand the existing Oregon Customs District to include southeastern Washington and southern Idaho and create a Columbia-Snake customs district that faithfully encompasses our total natural trade area.

But we are not here today to ask for a Columbia-Snake customs district merely because of our distinctive transportation and trade area. We are asking for this customs district because the existing Oregon customs district's volume and business, both in terms of tonnage and dollar value of duty collections, shows an historical trend line of growth.

Recent studies project a tripling of oceangoing cargo movements by the year 2000, going from 30 million tons to some 100 million tons. That growth is tied to agricultural, wood products and machinery exports and to imports supporting those industries.

Our region also is witnessing the increased use of Lewiston as a terminus for intermodal movements, serving producers and consumers as much as 1,000 miles inland and including Canadian cargoes.

All this for a waterway system that has only been fully operational with a 40-foot draft to Portland and 14-foot barge service to Lewiston since the mid-1970's.

And our region is home to the Silicon Forest, one of the Nation's most rapidly growing high-technology centers, which also places demands on customs services.

This kind of growth justifies expansions of customs services in our region which will support that growth and foster more growth.

We believe the Columbia-Snake River system is a region ready to realized its destiny as one of the world's great trading centers. And as a region with a net trade surplus, the Columbia-Snake corridor stands ready to help America reduce its troubling trade deficit.

With this kind of potential and our national objective of promoting exports, it would seem inconsistent that severe reductions in manning a number of district customs offices, including the Oregon customs district, are being proposed.

Instead of handcuffing our industry, we should be looking at customs services that are efficient, cost-effective and meet industry needs. We should tie our actions to our objectives.

We think the geography is there, the trade is there and the growth is there to justify expanding, not cutting back, our region's customs services.

We urge your support for H.R. 5625 and would like to thank the members of the Pacific Northwest congressional delegation, and especially Congressman Ron Wyden, for their leadership on this important issue.

Chairman GIBBONS. Thank you, sir.

[The prepared statement follows:]

STATEMENT OF GARY L. CONKLING, PRESIDENT, PACIFIC NORTHWEST INTERNATIONAL TRADE ASSOCIATION

My name is Gary L. Conkling. I am manager of government relations for Tektronix, Inc., located in Beaverton, Oregon. I am appearing here today in support of H.R. 5625 as president of the Pacific Northwest International Trade Association (PNITA).

PNITA is a pro-trade policy group that represents more than 100 corporate and affiliate members in Oregon, Washington and Idaho. Our members include some of our region's largest manufacturers, small and medium-sized businesses, banks, insurance companies. freight forwarders and customhouse brokers, transportation companies, ports and international marketing organizations. In short, our members cover the full range of international commerce.

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It seems logical to our trading community that government agencies designed to serve this region reflect the boundaries of this region. That's why we support HR 5625, which would expand the existing Oregon Customs District to include Southeastern Washington and Southern Idaho and create a Columbia-Snake Customs District that faithfully encompasses our total natural trade area.

Trade emanating from Boise is not linked to Chicago. It is linked to the Columbia/Snake corridor. So is trade from Lewiston and Pasco and Unatilla and all the other upriver communities of Oregon, Washington and Idaho.

But we are not here today to ask for a Columbia-Snake Customs District merely because of our distinctive transportation and trade area. We are asking for this Customs District because the existing Oregon Customs District's volume and business, both in terms of tonnage and dollar value of duty collections, shows an historical trend line of growth.

Recent studies project a tripling of ocean-going cargo movements by the year 2000, going from 30 million tons to some 100 million tons. That growth is tied to agricultural, wood products and machinery exports and to imports supporting those industries.

Our reegion also is witnessing the increased use of Lewiston as a terminus for intermodal movements, serving producers and consumers as much as 1,000 miles inland and including Canadian cargos.

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With the kind of potential and our national objective of promoting exports, it would seem inconsistent that severe reductions in manning a number of district Customs offices, including the Oregon Customs District, are being proposed.

Instead of handcuffing our industry, we should be looking at Customs services that are efficient, cost-effective and meet industry needs. We should tie our actions to our objectives.

We think the geography is there, the trade is there and the growth is there to justify expanding, not cutting back, our region's Customs services.

Customs will benefit by being in a position to deal with a total trade region, offering its services efficiently and cost effectively.

Shippers will benefit by having access to the services they need to get their job done in a timely and economical way.

Residents of our region will benefit, too, because expanded trade means more jobs. And with high unemployment rates relative to much of the rest of the country, we desperately need jobs.

PNITA members believe we can create jobs because our goods and services are competitive in world markets. All we ask is government support to let us pursue our competitive advantage.

We urge your support for H.R. 5625 and would like to thank the members of the Pacific Northwest Congressional delegation, and especially Congressman Ron Wyden, for their leadership on this important issue.

Mr. **Wyden**. Mr. Newman will go next.

STATEMENT OF STEVEN W. NEWMAN, PRESIDENT, NEWMAN, WILSON & CO., INC., PORTLAND, OR, ON BEHALF OF COLUMBIA RIVER CUSTOMS BROKERS & FORWARDERS ASSOCIATION, INC.

Mr. **Newman**. Mr. Chairman, I thank you for the opportunity to testify today in favor of H.R. 5625. My name is Steven Newman and I am president of Newman, Wilson & Co, Inc., a custom house broker and foreign freight forwarder in Portland, OR. I am appearing today on behalf of the Columbia River Customs Brokers & Freight Forwarders Association, Inc., of which I am immediate past president. Our member firms are indicated in the margin of our letterhead.

Members of our association are responsible for handling the international trade documentation and detail for approximatley 85 percent of the general cargoes moving in and out of the Columbia/Snake River system. We represent most, if not all, of the firms engaged in international trade in the area covered by H.R. 5625.

We are emphatically supportive of this bill for a number of reasons, some of which I would like to detail.

In spite of the comment made by Customs that they don't like to cut across State lines, I would like to say that the San Francisco district includes most of Nevada, with Los Angeles having Clark County. Minnesota is divided among three districts, all of which are natural trading areas. Since most of the cargo that already moves inland to the Boise area is handled by members of our association in our district, when a port of entry is established in Boise, the Customs in Great Falls is going to have to refamiliarize themselves with the cargoes and customers, which is going to create some additional expense and work in the Customs area.

There are increasingly numbers of high tech companies locating in the Boise area and as long as Customs is responsible for enforcement of the regulations under the Operation Exodus it doesn't make much sense to us to have Customs in Boise reporting to Customs in Great Falls when the cargo is going to come down the river and be loaded for export in Portland or Vancouver—one of the downriver ports. We can see problems missing dates on letters of credit, missing vessel sailings, and so on. It's much simpler for Customs in Boise to deal directly with Customs in Portland where all of the paperwork is going to be finalized and banked and the shippers are going to be paid.

Finally, when Boise is established as a port of entry as Customs indicated today it would, of those of us who already handle those accounts, some may want to open offices in Boise. Should Boise remain part of the Great Falls district we would have to, as customs brokers, be relicensed to operate in that district. Despite what was said today by Customs in their earlier testimony, that is not an immediate nor automatic situation for us. We don't think its fair to put that extra burden on people who are already handling a large part of this business to have to go through the whole relicensing process again.

I too would like to thank Congressman Wyden for his leadership in this matter, and thank you for your time.

Chairman GIBBONS. Thank you, Mr. Newman.

[The prepared statement follows:]

STATEMENT OF STEVEN W. NEWMAN, PRESIDENT, COLUMBIA RIVER CUSTOMS BROKERS & FORWARDERS ASSOCIATION, INC.

I want to thank you for the opportunity to testify today in favor of H.R. 5625. My name is Steven W. Newman and I am president of Newman, Wilson & Co., Inc., a Custom House Broker and Foreign Freight Forwarder in Portland, Oregon. I am appearing today on behalf of the Columbia River Customs Brokers and Freight Forwarders Association, Inc. of which I am immediate past president. Our member firms are indicated in the margin of our letterhead.

Members of our Association are responsible for handling the international trade documentation and detail for approximately 85% of the general cargoes moving in and out of the Columbia/Snake River system. We represent most, if not all, of the firms engaged in international trade in the area covered by HR 5625.

We are emphatically supportive of this bill for a number of reasons; some of which I'd like to detail.

The Pacific Customs Region consists of our major Customs Districts representing trade areas each with its separate geographical identity and cargo mix. On the north is Seattle and Puget Sound, to the south is San Francisco and the Bay area and Los Angeles and southern California. The fourth area, the Columbia/Snake system, is as distinct and viable as each of the others. These four areas complete constantly with each other to attract and hold import and export cargoes. In order to provide importers and exporters in our area with the full range of foreign trade services necessary to make them competitive in the marketplace we must have the services that can be provided only by a full service Customs District. To artificially limit that District to certain state lines ignores the geography of the area and leaves exporters and importers in Boise, for example, whose cargo moves through the river system, reporting to Customs in Great Falls, Montana with Regional Headquarters in Chicago instead of more logically working through Customs in Boise and then Portland.

Since most of the cargo now moving inland to upriver areas is handled by ourselves, to establish a Port of Entry in Boise reporting to Great Falls would mean additional expense to Customs to familiarize themselves with shippers and cargoes already known to us and to Customs in this District.

With increasing numbers of "high-tech" industries locating in the Boise area, whose exports in many cases require licensing under the Export Administration Act, we are obviously concerned with our ability to act effectively on behalf of these shippers. Since Customs, under Operation Exodus, is responsible for enforcement with regard to high-tech exportations it makes sense to us to have the Customs Inspector who may examine cargo in Boise report to a District in Portland where the cargo will physically be placed aboard the exporting vessel or aircraft. Questions would be resolved much quicker than having to hold cargo in Portland while waiting for an answer from Great Falls. The increasing use of intermodal transportation, with cargo loaded directly into ocean containers at the point of origin, makes this even more important.

Most of our members have been active in the Boise area, assisting importers and exporters with freight and duty quotations and so on. With Boise as a Customs port of entry some of us may choose to establish offices there to handle clearances and documentation even more directly. Should, however, Boise remain a part of the Great Falls District, any Customs Broker from our District would have to apply for a new Customs license to operate in Boise, handling clients which are already in fact, utilizing his services. This would place an obvious and, I think, unfair burden on us, as well as create additional work and expense for the Customs Service.

As to Customs' comments regarding changing regional boundaries it can be pointed out that regional boundaries are not sacrosanct but often changed as witness Great Falls itself having been moved from the Pacific to the North Central Region and Nogales from the Pacific to the Southwest Region. Nor is it unusual to divide states among logical district jurisdictions as witness our district's having a portion of southern Washington state, San Francisco all of Nevada except Clark County which goes to Los Angeles and Minnesota which is divided among three districts.

All of the importers and exporters in the proposed new district will benefit by having all of the services needed for smooth flowing trade available in one place. The ocean carriers are here, the banks, the barges, truckers and rail lines, the Customs Brokers and forwarders. It simply doesn't make sense to arbitrarily have the Port of Clarkston in Washington State report to Seattle while Lewiston, Idaho directly across the river reports to Great Falls, keeping in mind that their cargoes have more than likely moved through the Columbia/Snake System. Rather than create artificial barriers to efficient cargo handling we ought to be doing everything possible to enhance the free flow of goods and services.

H.R. 5625 creates a Customs District that is responsive to the needs to the areas's international trade. It will enhance the services available to the trade community and provide the means necessary for continued growth throughout the region. It will likely encourage increased cargoes including the possibility of Canadian origin cargoes moving through the Columbia/Snake system. Cargoes which are now lost to us. In fiscal year 1983 our District collected more than $136,000,000.00 making us, of the 45 or 46 existing districts, the nineteenth largest.

We would expect that revenue to continue its upward growth. Each of the four Pacific Region Customs Districts ought to include, and all but ours does include, its natural tributary area. This bill redresses that imbalance and we encourage your favorable consideration.

Thank you.

Chairman GIBBONS. We will hear from you, Mr. Murphy.

STATEMENT OF BENSON B. MURPHY, EXECUTIVE DIRECTOR, PORT OF VANCOUVER USA, AND ON BEHALF OF COLUMBIA/SNAKE RIVER MARKETING GROUP

Mr. MURPHY. Thank you, Mr. Chairman. Before we start, I am Ben Murphy from the Port of Vancouver, and not necessarily for the record I am a transplanted Floridian.

Chairman GIBBONS. Well, good, I thought you looked familiar.

Mr. MURPHY. I have been in Tampa many times and I would like to have you give my regards to your esteemed colleagues Congressman Earl Hutto and Senator Lawton Chiles. I was on several committees in Florida with the dynamic duo of Gov. Bob Graham and Wayne Mixon. So perhaps some of my statements here are experiences that we have learned in Florida.

Chairman GIBBONS. How did you get so far away from home?

Mr. MURPHY. I still have a condo in Daytona Beach, so I'm a taxpayer in Florida too.

I'm executive director for the Port of Vancouver USA and the authorized representative of the Columbia-Snake Water Marketing Group, which would like to present testimony in support of H.R. 5625, a bill requiring the Commissioner of Customs to establish a customs district known as the Columbia-Snake River Customs District.

My testimony is a part of the record, Mr. Chairman, and the remarks I don't believe it's necessary to detail. All of it is in here but I would like to hit a few of the highlights briefly and perhaps a philosophical viewpoint.

Chairman GIBBONS. All right.

[The prepared statement follows:]

Port of Vancouver, USA,
Columbia Snake River System,
Vancouver, WA, June 19, 1984.

Hon. Sam Gibbons,
U.S. Representative, Florida, Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Washington, DC.

Dear Chairman: The undersigned, Benson B. Murphy, Executive Director, Port of Vancouver, Washington "U.S.A." and authorized representative of the Columbia Snake River Marketing Group would like to present testimony in "support" of HR 5625—A bill requiring the Commissioner of Customs to establish a customs district known as the Columbia-Snake Customs District.

The Port of Vancouver, Washington "U.S.A." is a deepwater seaport 104 miles up the Columbia River and the commencement of shallow draft navigation on the Columbia/Snake system. While a small port in terms of overall tonnage when compared with the large deep-sea ports of the Pacific Coast, we represent a sizeable and important economic investment for our local area, the State of Washington, the Pacific Northwest and the U.S.A. In 1983 we handled 4,055,104 metric tons of cargo (3,315,547 M/T export and 739,557 M/T import) a very important factor as our country strives for a better balance of trade.

The port is a municipal corporation of the State of Washington and in our annual statement of December 31, 1983 showed assesed valuation of 4.2 billion dollars. With 27 industrial tenants we are an employment force of from a low of 1300 to a seasonal high of 2400 persons on an annual basis.

In order to meet the needs of world trade we are looking at 8.5 million dollars in new facilities, equipment and property development 1984/85 and our 5 year plan indicates an investment in excess of from 30–50 million dollars to meet the demand of growing world trade.

The Columbia/Snake River Marketing Group represents 34 ports on the Columbia Snake River system:

Port of Arlington, Oregon, Port of Astoria, Oregon, Port of Benton, Washington, Port of Beverly/Royal Slope, Washington, Port of Camas-Washougal, Washington, Port of Cascade Locks, Oregon, Port of Chelan County, Washington, Port of Chinook, Washington, Port of Columbia County, Washington, Port of Clarkston, Washington, Port of Douglas County, Washington, Port of Garfield County, Washington.

Port of Hood River, Oregon, Port of Ilwaco, Washington, Port of Kahlotus, Washington, Port of Kalama, Washington, Port of Kennewick, Washington, Port of Klickitat, Washington, Port of Lewiston, Idaho, Port Longview, Washington, Port of Mattawa, Washington, Port of Morrow, Oregon, Port of Pasco, Washington, Port of Portland, Oregon.

Port of Quincy, Washington, Port of St. Helens, Oregon, Port of Skanania, Washington, Port of The Dalles, Oregon, Port of Umatilla, Oregon, Port of Vancouver, Washington, Port of Wahkiakus I/II, Washington, Port of Walla Walla, Washington, Port of Whitman County, Washington, Port of Woodland, Washington.

This system is one of the fastest growing navigation systems in the U.S. as it strives to take its proper place with other natural and great distribution/transportation river networks of the world. The Columbia/Snake System is a navigable waterway extending 465 miles inland from the Pacific Ocean (see Figure 1).

The river system runs through the States of Oregon, Washington and Idaho (the exact geographic areas that this legislation contain). It serves the transportation and distribution needs of a much larger area extending throughout the Pacific Northwest, into the Midwest, Northeast and Southeast portions of the United States as well as the heartland of Canada.

The mouth of the Columbia River has been maintained at 48′ for six miles and is now being deepened by the U.S. Army Corps of Engineers (Summer/Fall '84) to 55′. A 40′ deepwater channel then continues for 98 miles up the Columbia River to the Port of Vancouver, Washington "U.S.A."! A 14′ channel is maintained for 355 miles on the Columbia/Snake River System to the Port of Lewiston, Idaho.

According to the U.S. Army Corps waterborne statistics 1981, 28.6 million short tons of cargo moved deep sea out of the lower Columbia River ports while 17.3 million short tons of cargo were moved on the upper Columbia/Snake System for a total of 45.9 million short tons of water borne commerce along with the vast tonnage moved by rail, truck and air through this important and efficient U.S. transportation and distribution network to the Pacific Rim and the world.

The 34 public port districts of the Columbia/Snake Marketing Group alone show an assessed valuation in excess of 54.8 billion dollars and are a key economic factor to the United States in terms of world trade, industrial development, tourism and recreation.

The Columbia/Snake System is the largest export load center of the west coast of the U.S. with major commodities including grain, petroleum, forest products, containerized bulk and general, automobiles, steel and many dry bulks.

The Columbia/Snake System serves as the major transportation hub and distribution center for the Pacific Northwest. It is served by major interstate highways, by three major rail lines, major airlines that give it connections to all parts of the U.S.—North, South and East. When the U.S. is depending on its World Trade import/export load centers to become energy and cost efficient for shippers and receivers of world trade, there is no better or truer multi-modal transportation/distribution center in the world. Air, steamship, barge, rail, highway combine to give the Columbia/Snake System an advantage that must be taken now and in the future. The remarkable thing is that the surface has not been scratched.

The 34 port districts of the Columbia/Snake marketing Group plus the private industrial docks (shallow draft barge and deep sea vessel) work together to stimulate these movements. 50% of the export grain (approximately 12 million short tons—'82 arrives at lower Columbia ports by barge. Approximately 40% of the petroleum products received at the lower Columbia deep draft ports is shipped up-river. 30% of the containerized general and bulk commodities move by barge on the river system. (Unique in the U.S. as the only shallow draft barge container movement!)

With the deepening of the Columbia River mouth and the anticipated enlargement of Bonneville Locks (a present navigation bottleneck in the system) the potential for cargo growth on this river system by the year 2000 is estimated at 3 times the 1980 tonnage figures or in excess of 130 million S/T deep sea and shallow draft together. When you consider the future energy efficiency of barge transportation, the true intermodal distribution network innovations in rehandling of cargoes (particularly bulks, containers, unitized and specialty) and the tremendous growth potential of the northwest area and its world markets (particularly the Pacific Rim and Southast Asia), then you realize why we have to be able to meet the needs of the shippers and receivers.

The Columbia/Snake River Marketing Group was a spontaneous coalition of the 34 public port districts along the Columbia/Snake System. Organized originally to look at navigation restriction problems and a need for combined legislative (local, state and federal) strength. It quickly became apparent that togetherness in marketing by joining financial resources and ideas was the best way to attract world trade cargoes, industrial development and tourism/recreation dollars to the northwest area—The American Northwest Network to the World—It Works!—was born. In the past year system wide workshops were held—ports and public educated, funding formulas developed budget for '84/'85 doubled, group unity achieved and joint marketing efforts will be kicked off in the Fall of "84".

Why do we as a port and the Columbia/Snake Group of ports worry about U.S. Customs service? Because we only sell a service to our customers, the importers and exporters of the world, and the U.S. Customs districts play a big part in cost and smoothness of the distribution system. Shippers and Receivers in the U.S. and the world are worried mainly about two things. Cost and time which cover a multitude of items from damage to theft to congestion etc., but bottom line, it all boils down to dollars. We can have the potential for one of the largest, most efficient transportation systems in the world, but if we cannot provide the best customer service at competitive rates we might as well pack up and go home.

At the Port of Vancouver, Washington U.S.A. we pride ourselves in providing excellent customer service and we are competitive. The Columbia/Snake Group of ports must be in the same position for this transportation-distribution system to provide its true potential of exports and imports to assist our balance of trade and make a strong economic contribution to the U.S.! One of the key elements is the service performed by the U.S. Customs Service from practical on the job manpower to efficient paper work flow of documentation to keep our service at a high level of efficiency and low cost.

We have been concerned over the past three years as under the guise of efficient consolidation and reorganization, the Oregon Customs District has been under fire to have manning reduced and service curtailed.

At the same time geographical coordination has chopped up a perfect intermodal transportation network into at least three and sometimes four different Customs Districts.

The Oregon Customs District annual collections have increased by 30–40% over the past five years and in 1982 154 million dollars in duties was collected by the Oregon District. In 1979 and 1980, 25 customs districts throughout the U.S. showed decreases in dollar collections, 21 showed increases and of these 21 only 3 had a larger per cent growth than Oregon.

In 1982 7 billion dollars worth of cargo moved through the Oregon District covered by 5,000 duty rate classifications. If appraisal centers for this area are moved to already congested Seattle, where will our shippers and receivers be. It is time for U.S. Customs Service to not talk about reductions and consolidation for one of its fastest growing Customs Districts, but to look at a common sense approach such as HR 5625 and create an economic plus for the U.S.

The industrial load center of the world has shifted West rapidly in the last 400 years from Europe to British Isles to the East Coast U.S., the Mid West and is now continuing that movement. Trans-Pacific cargo movement in 1984 will surpass Trans-Atlantic cargo movement for the U.S. for the first time in our history. The Pacific Rim and S.E. Asia, Australia, South America and Central American economics are the fastest growing in the world and it will be the west coast ports of the United States through which the majority of these import/export goods will move.

In F.Y. 1983 $9,784,959,351.00 was collected in the seven regions—2.65 billion of that was in the Pacific Region and 136.6 million was in the Oregon District. If our volume of cargo movement doubles (by the most conservative predictions) by 2000, and we are not ready to service that commitment, then our shippers and receivers, our ports and industry and the U.S. is in trouble. If as predicted, it triples—then we are in big trouble, particularly if at the same time we are reducing, consolidating, reorganizing and taking valuable U.S. Customs Services away from the natural geographic load center systems.

The Port of Vancouver, Washington U.S.A. wants to compliment the U.S. Customs Service—Oregon District and all of those who have helped to keep our high level service to customers. There is a good working relationship between customers, port employees, dock employees, transportation system employees and the U.S. Customs Service at our port and we feel that is true for the entire river system—that is good! Lets improve it!

It is difficult to speak for the many public and private transportation distribution centers on the Columbia/Snake system, but they will be well represented by testimony you will hear this day. I would like to enclose a few comments from several other ports on the system who have a sincere concern for positive action on this legislation.

Mr. Robert McNannay, General Manager, Port Longview, Washington who operates a 177 acre marine terminal facility on the Columbia River 66 miles from the Pacific Ocean. "In 1983 there was 1,710,737 metric tons of water borne commerce across port facilities, plus another 1.5-2.0 million metric tons across private industrial docks in this area."

"Cargoes originating in the upper Columbia/Snake River System are a significant part of this tonnage as is indicated by the fact that 39% of all containers handled through the Port Longview came from various upriver ports."

"We are a part of a unique economic system and region and the character of its new commodities and trade frame make the location and effectiveness of the new customs district irrefutable The economy of Longview, Kelso and the S.W. Washington area is heavily dependent upon import/export activity and this proposed customs district along with joint Columbia/Snake marketing programs will be a significant boost in helping us to overcome our severe problems in rebuilding a depressed economy."

Mr. Steve Felkins, Executive Director—Port of Astoria, Oregon who operates a large 6 berth, deep draft ocean terminal just 10 miles inside the entrance of the Columbia River.

"The Port of Astoria is a small deep sea port in terms of tonnage but an important link in the Columbia/Snake System. We are building for the future and look towards the 2000's when we will be the deep draft 45–55′ port for the system with mid-stream, re-handling of bulk commodities and taking our part of the tremendous growth potential."

"While Lewiston, Idaho may be 465 miles away, it will be an important part of the Port of Astoria's plans in the future along with other up river and down river ports. We support HR 5625 to help provide natural geographic efficiency in customs service for the future."

Mr. Paul Vick, General Manger, Port of Pasco located 300 miles up the Columbia River in the Tri-City (Richland-Kennewick-Pasco) Washington industrial area.

"We support the organization of the Columbia/Snake River Customs District as it will greatly enhance our river transportation system. Our shippers will find greater efficiency in processing documents and our waterway system will receive the important economic benefits of the unified and efficient distribution network."

Mr. Gary Schmadeka, Manager, Port of Lewiston, Idaho located at the extreme Easterm terminus of Columbia/Snake System 465 miles from the sea along with the inland ports of Wilma (Port of Whitman County) and Clarkston, Washington.

While we may be at the extreme end of the system we may well benefit the most from a consolidation of a Columbia/Snake Customs District that will unify our shippers and receivers to that natural cost efficient geographic link so important to our local economy. We are depending on this sensible, practical approach to service and looking forward to joint marketing programs that will enable our port to reach its maximum potential in economic benefit to Lewiston, Idaho and the heartland of the U.S. and Canada.

There has been an increased interest from Canadian world trade interests, particularly bulk cargo movers in the Columbia/Snake System as they look at costs and congestions in Canadian ports' future, perhaps not tomorrow, but definitely by 1990–2000.

The Portland International Airport is experiencing ever increasing international business in terms of passengers and air freight. It and the other smaller airports that are along this transportation network play an increasing large role in the efficiency of the entire system.

To meet the present and future demands it is imperative that a U.S. Customs District such as is propsed in HR 5625 be created to assist in the smooth flow of people and cargo. The Port of Portland and other port districts have planned expansion approved over the next few years to efficiently handle the projected increased volume. Without an effective U.S. Customs Service within the system millions of dollars in planning development and construction funds for the future might well be wasted and substantial revenues and employment lost.

This will indicate from one end of the Columbia/Snake River System to the other that optimism and enthusiastic support are there. Our 34 port districts and private industrial docks such as forest product companies, grain terminals, petroleum terminals and private cargo facilities have plans on the drawing boards to put many millions of dollars in new facilities, equipment and land acquisition between now and 2000. We must, to meet the demands of world trade, industry, tourism/recreation and our economy.

We can't do this if the infrastructure is not there for the system to do its best job—a Columbia/Snake Customs District is not the answer, but a very important part of the long term solution to us getting the most of the Columbia/Snake River System. It will be America's Northwest network to the world, for Vancouver, for all. It will work if proper legislations such as HR 5625 is passed to assist this practical, energy efficient, properly located geographic transportation and distribution load center to the world to reach its potential.

We thank you, Mr. Chairman, for the opportunity to present the views of the Port of Vancouver, Washington U.S.A. and the Columbia/Snake River Marketing Group in support of HR 5625.

Sincerely,

BENSON B. MURPHY,
Executive Director, Port of Vancouver,
Member, Columbia/Snake Marketing Group.

Attachment.

COLUMBIA/SNAKE RIVER SYSTEM

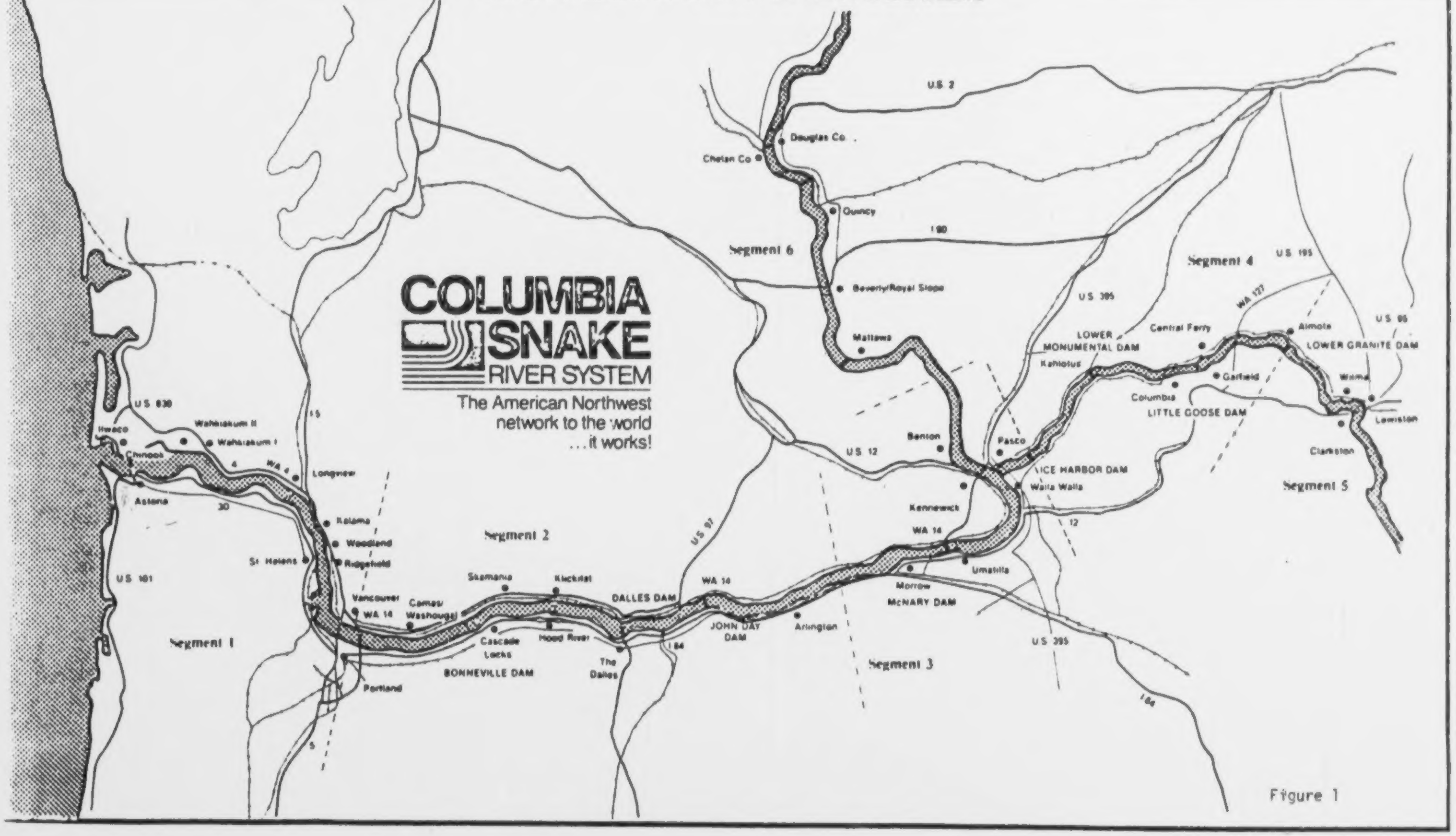
COLUMBIA
SNAKE
RIVER SYSTEM
The American Northwest
network to the world
...it works!
Segment 1
Segment 2
Segment 3
Segment 4
Segment 5
Segment 6
US 2
US 101
US 830
US 12
US 97
US 395
US 195
US 95
190
WA 4
WA 14
WA 127
I 84
I 5
30
12
Ilwaco
Chinook
Astoria
Wahkiakum II
Wahkiakum I
Longview
Kalama
Woodland
Ridgefield
St Helens
Vancouver
Portland
Camas/Washougal
Skamania
Klickitat
Cascade Locks
BONNEVILLE DAM
Hood River
The Dalles
DALLES DAM
JOHN DAY DAM
Arlington
Morrow
McNARY DAM
Umatilla
Kennewick
Benton
Pasco
ICE HARBOR DAM
Walla Walla
Chelan Co
Douglas Co.
Quincy
Beverly/Royal Slope
Mattawa
LOWER MONUMENTAL DAM
Kahlotus
Central Ferry
Columbia
LITTLE GOOSE DAM
Garfield
Almota
LOWER GRANITE DAM
Wilma
Lewiston
Clarkston

Figure 1

Mr. MURPHY. The mouth of the Columbia River and the Snake River system to Lewiston, ID, is some 465 miles and encompassing 34 port districts in Oregon, Washington, and Idaho. The Port of Vancouver USA is 104 miles from the entrance with a depth of 40 feet minimum. The other 355 miles has a depth of 14 feet for barge traffic and includes grain, forest products and, uniquely, the barge container traffic. And what I want to allude to now is that the Port of Vancouver in its annual 1983 report showed an assessed value of $4.2 billion with 27 industrial tenants employing a minimum of 1,300 to a seasonal high of 2,400. If you take the 34 port districts, they are assessed at a value of $54.8 billion.

I would call your attention to the back page of our testimony which describes the 34 districts, and on reviewing that part you will see that Congressman Wyden's bill really deserves everyone's support, and I would like to highlight a few other details.

The Oregon Customs District has increased their collections 30 to 40 percent over the last 5 years. In 1982 they collected $154 million in duties. Of course, that's not a big amount compared to the $8.9 billion that was collected nationwide.

In 1982 they had a $7 billion value of cargo move through the Oregon district by 5,000 duty rate classifications. The Columbia-Snake River Marketing Group became a reality last year when it was decided that as a group they could market and service the entire river system both for inbound and outbound cargoes. Based on the statistics by the U.S. Army Corps of Engineers in 1981, we had 28.6 million tons of cargo through the Lower Columbia while 17.3 million tons moved through the Upper Columbia-Snake River system.

The 34 port districts of the Columbia-Snake Marketing Group plus the private industrial docks worked together to stimulate these movements. The corps has also planned on deepening the Columbia River mouth and anticipate the enlargement of the Bonneville Locks. They project the tonnage to be three times that of the 1980 figure. If so, we must be ready.

Now I believe is the time to prepare for the future. I think that's from your part of Florida, if you will.

Chairman GIBBONS. I recognize that.

Mr. MURPHY. Oh, you recognize that, OK.

The Port of Vancouver, WA, wants to complement the U.S. Customs Service, Oregon District, and all those who have helped to keep our high-level service to customers. There is a good working relationship between the customers, port employees, dock employees, transportation system employees and the U.S. Customs Service at our port as well as at the other ports. We believe if we are to provide the proper type service, that now is the time to prepare. And in support of that, Mr. Robert McNannay, who is the general manager of Port Longview, says, and I quote:

> We are a part of a unique economic system and region and the character of its commodities and trade frame make the location and effectiveness of the new customs district irrefutable.

Steve Felkins, the executive director of the Port of Astoria, and I quote:

> While Lewiston, Idaho, may be 465 miles away, it will be an important part of the Port of Astoria's plans in the future along with other upriver and downriver ports. We support H.R. 5625 to help provide natural geographic efficiency in customs service for the future.

Mr. Paul Vick, general manager of the Port of Pasco, which is about 300 miles upriver, his sentiments are basically the same.

Mr. Gary Schmadeka, manager of the Port of Lewiston:

> While we may be at the extreme end of the system, we may well benefit the most from a consolidation of a Columbia/Snake Customs District that will unify our shippers and receivers to that natural cost-efficient geographic link so important to our local economy.

Lastly, the Portland International Airport, even though Portland is our friendly competitor, has been involved in international traffic both for freight and passengers, and it's growing and we believe its of paramount importance that a customs district be available to handle this type of cargo now and for future demands.

It will be an America's Northwest network to the world for Vancouver and all. It will work with proper legislation such as H.R. 5625 if passed to assist this practical, energy-efficient, practical geographic transportation and distribution load center to the world to reach its potential.

I am delighted to have this opportunity to have presented the views for the Port of Vancouver, WA, the other ports in the Columbia River, and the Columbia-Snake River marketing group in support of H.R. 5265. We will be happy to answer any questions that the panel may have.

Chairman GIBBONS. Fine. Let me ask you some questions about this. This is very interesting. How long has the Columbia-Snake River been in operation? Fully completed as it is now, or is it fully completed now?

Mr. MURPHY. I am not sure I can answer.

Mr. CONKLING. Really, in its present form, it has been operating since the mid-seventies. I think there is general agreement that there is one final step that needs to be taken, so that it is fully effective and that is the addition of a second modern lock at Bonneville.

It was the first of a series of locks built. It is a small chamber, one that really requires break-up of barges that are brought up river, down river, in the normal configuration, the efficient configuration.

Once that is done, and there are moves to authorize that lock this year, the system will be fully complete, but it is operational now and has been in this present form since the mid-seventies.

Chairman GIBBONS. The Bonneville lock is where in relationship to the Cascade locks?

Mr. MURPHY. Bonneville Locks are by Hood River, right adjacent to there, sir.

Chairman GIBBONS. I see that.

Mr. WYDEN. So you know where we are on that. I introduced legislation with most of the same people who are on this bill to authorize new locks at Bonneville. That has been incorporated into our colleague, Chairman Rose's legislation, that will be going to the floor probably next week.

Chairman **Gibbons**. Now, how far north do you go on that Columbia? Is it navigable up to Douglas or——

Mr. **Murphy**. The deep water port at 40 feet is up to the Port of Vancouver, which crosses I-5 bridge. From there, it is a minimum of 14 feet, which is all barge traffic. There are deeper spots, of course.

Chairman **Gibbons**. That is over to Lewiston?

Mr. **Murphy**. Yes, as far east as Lewiston, ID.

Chairman **Gibbons**. How far north does it go up there? I see in segment 6 on your map, does it cut off at Pasco?

Mr. **Murphy**. No, it goes beyond Pasco.

Chairman **Gibbons**. How about north?

Mr. **Murphy**. Wait a minute. It does go north up to, I am thinking of Yakima.

Chairman **Gibbons**. I don't see Yakima on the map. I do see Douglas.

Mr. **Murphy**. Douglas, that is correct, it does go to Douglas.

Chairman **Gibbons**. You get a 14-foot barge up to Douglas?

Mr. **Murphy**. And Quincy as well.

Chairman **Gibbons**. That is some system.

Mr. **Murphy**. It is the system of the future. They are talking about load centers now. The Portland-Vancouver-Longview area perhaps will be one of the load centers in particular with grain.

Peaney & Company have spent $40 million in a separate elevator of their own recently at the Port of Kalama for feed grains, which are a big part of the Northwest. They haven't been able to sell it to the Midwest or the Far East, they are just beginning to open up that market.

So, the future potential, we are just scratching the surface of the potential as I see it. That was one of the attractions to Vancouver.

Chairman **Gibbons**. Let me ask you, on this map, this Columbia-Snake River map that you have there, where is district boundaries, custom boundary lines now, near Walla Walla or where is it?

I am just trying to get fixed in my mind. You are in three districts and you want to be in one.

Mr. **Murphy**. It divides about Pasco.

Chairman **Gibbons**. Divides up by Pasco. That is near Walla Walla. It shows on this map.

Mr. **Murphy**. I think one of the important things I wanted to stress and perhaps didn't get earlier is the dollar investment of all of the ports and the planned investments of the future.

The Port of Vancouver is not a big port. We are now in the phase of an 8.5 million expansion. We have the commissioner's, through their farsightedness, have a 5-year plan somewhere between $30 to $50 million of improvements preparing for the future.

I think the Columbia-Snake River system, by the organization of the port, the district for their port marketing group, are looking to the future as well.

Chairman **Gibbons**. Well, I wish you the best of luck. Where does most of your products go out of that area? They do in the Pacific Ocean, obviously. Where do they go after that?

Mr. **Wyden**. A tremendous new Pacific Rim market that is where we think our future is. With bulk commodities. Those are the markets we really want to tap.

Mr. Murphy. Pacific Rim is the strongest market. We have been moving cargoes to Australia, to the Mideast, to Saudi Arabia, we have had cargoes to Italy, France, England, and Latin America is beginning to get a little bigger.

We have had imports of controversial steel from Brazil.

Chairman Gibbons. We understand about that. We get a little of that in my area, too.

Mr. Murphy. That is right.

Chairman Gibbons. Sometimes we need it to keep the price honest.

Mr. Murphy. Strategically, last year, the ports, talking collectively, the Pacific Rim was the strongest, naturally, but we did move cargoes both inbound and outbound to Europe, Asia, Southeast Asia, Indonesia, and all the different areas, so we have been circling the globe, so to speak, because of the varied amount of products.

Aluminum is a big product. The low electricity and hopefully, that market will expand, it is in the doldrums right at the moment, but again, I stress, we are looking to the future, and I think now is the time to move ahead.

Incidentally, I brought two directories which I would like to give you for your staff to review. I think it would be interesting to see what this infant Columbia-Snake River marketing group, how they are expanding over the last year.

Chairman Gibbons. I want to commend you for your farsightedness, all of you have exhibited it in this, and we will keep pushing on it.

Mr. Wyden. Thank you very much, Mr. Chairman, again, for all your time and interest when your schedule is so busy.

Chairman Gibbons. Thank you very much.

Mr. Murphy. We enjoy Saddlebrook.

Chairman Gibbons. This concludes our hearing on the tariff and trade bills. Because we are planning to mark up the tariff and trade bills early next week, the record will remain open until the close of business tomorrow, but I promised someone from the petroleum industry that we would let them have a little more time.

We can go to Monday if they can't get it by that time. Thank you very much.

[Whereupon, at 2:25 p.m., the hearing was adjourned.]

WRITTEN COMMENTS

H.R. 3159

To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes.

Statement of the American Iron & Steel Institute

The American Iron and Steel Institute is pleased to present the following comments for inclusion in the record of the House Ways and Means Trade Subcommittee hearings on H.R. 3159—"To require that customs duties determined to be due upon a liquidation or reliquidation are due upon that date, and for other purposes."

The AISI strongly supports H.R. 3159 as an urgently needed revision in Customs law and procedures.

We believe that current Customs practices which have developed as a result of a decision by the U.S. Court of Customs, Patent Appeals (Heraeus-Amersil decision No. 81-19, February 18, 1982) have resulted in frivolous appeals of assessed duties whose only purpose is to delay the actual payment of duties to the U.S. Treasury.

We believe that importers should incur liabilities on imported goods at the time of liquidation and that such liabilities should be treated in a manner analogous to liabilities incurred with the IRS. An income tax liability, for example, is incurred on a given April 15, and any increased tax liability resulting from appeals, when adjudicated, are due, with interest, retroactively to the original April 15th. It does not make sense to allow an importer to delay duty payments past the liquidation date without interest and/or penalties just as it would not be sensible for the IRS to allow taxpayers (private or corporate) to delay tax payments without interest simply because an appeal was filed. Obviously if the current Customs system were adopted by IRS, the number of frivolous appeals would increase, and tax collection would be less efficient, slower and more costly. This is precisely what has happend with regard to customs duty collections as a result of the Heraeus-Amersil decision.

H.R. 3159 would not limit the ability of an importer to appeal a liquidated entry's duty. It would simply eliminate the "profit" in filing frivolous appeals.

We believe that H.R. 3159 would have a very positive impact on duty collections and the Customs Service—making collections more timely and the Customs Service more efficient in collecting duties. Moreover, this bill with help—albeit in a small way—reduce the government's budget deficit.

H.R. 4178

To amend the Tariff Act of 1930 to increase from $250 to $1,500 the value of goods eligible for informal entry, and for other purposes.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO believes that both the current state of the economy and the negotiating position of the United States call for extreme caution in granting authority to reduce tariffs. Further at a time when Congress is looking for every dollar of possible revenue, it is a move in the wrong direction to cut revenue derived from tariffs.

With close to 10 million Americans out of work and imports flooding into the American market displacing domestic production and jobs, tariff reductions simply do not make sense. The U.S. experienced a merchandise trade deficit of almost $70 billion in 1983, and the deficit will grow to at least $125 billion in 1984. As this crisis in trade intensifies, tariff cutting adds fuel to the fire, costing jobs and production by encouraging imports. In addition, businessmen are led to believe that movement of factories to other countries and/or expansion abroad or importing will be cheaper than producing in the United States. The result is a double incentive to erode the U.S. industrial base even further and to cut the jobs and production opportunities that can develop here.

These general views do no mean that every single proposal for tariff cutting falls into this category. The following comments on specific bills represents the views of the AFL-CIO.

The AFL-CIO opposes H.R. 4178 which would increase from $250 to $1,500 the value of goods amount eligible for informal entry. We have repeatedly opposed increasing the dollar value of imported merchandise eligible for informal entry procedures. In October 1983, the delegates to the AFL-CIO Fifteenth Constitutional Convention adopted a resolution on International Trade and Investment which reaffirmed our opposition to: "any proposal to raise the informal entry ceiling from the present level of $250 * * *." An increase in the informal entry ceiling to $1,500 as called for in H.R. 4178 would make import monitoring more difficult and increase the possibility of duty evasion through the use of false or inaccurate shipping documents. At a time when imports are increasing at an alarming rate, better and more accurate information is needed to assess their impact on the United States. This bill would accomplish just the opposite, and thus make enforcement of U.S. laws even more difficult.

The AFL-CIO opposes H.R. 5228 which authorizes the acceleration of the staged tariff rate reductions agreed to in the Tokyo Round of the Multinational Trade Negotiations. Presumably, the timing of these reductions was carefully considered during those negotiations, and the acceleration of tariff cuts will not be beneficial to domestic industry and American workers. From 1980 to 1983, imports to the U.S. increased by 30 percent and have been increasing even faster in 1984. The minimal tariff protection provided in current law should not be reduced.

STATEMENT OF WILLIAM J. ST. JOHN, JR., NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

SUMMARY

(1) The dollar value for an across-the-board increase for "informal" entry of goods under Section 498 (a)(1) of the Tariff Act should be $600, rather than the $1,500 proposed by H.R. 4178, coupled with a careful monitoring of Custom's ability to handle the increase in informal entries under the $600 ceiling.

(2) Because of the special problems in processing mail entries, any shipments entered through the mails under "informal entry" procedures should be limited a value of $250.

(3) Any increase in the value limitation for informal entries should be accompanied by language preventing circumvention of the presently-existing prohibition in Section 484 of the Tariff Act, added by Public Law 97-466, against unlicensed "nominal" consignees clearing merchandise on behalf of others, via the device of informal entries made under the new higher value limitation.

STATEMENT

The National Customs Brokers & Forwarders Association of America, Inc. ("NCBFAA"), is a nationwide association of Customs brokers and freight forwarders; and which also has affiliated regional associations located at major ports throughout the United States. In response to your invitation, we would like to make the following comment regarding the above captioned bill.

H.R. 4178 would change the dollar limit for "informal" entries under § 498(a) of the Tariff Act of 1930 [authorizing the Secretary of the Treasury to prescribe regulations for the entry of various classes of goods) by raising the present limit of $250 to $1500 (§ 498(a)(1); 19 U.S.C. 1498(a)(1)]. However, amended § 498(a)(1) would not apply to textile and textile products valued in excess of $250, merchandise subject to quantitative import restrictions, articles subject to antidumping or countervailing duties or any other article for which formal entry is required without regard to value. In general informal entries are completed with less paperwork than "formal" entries made under § 484 of the Tariff Act (19 U.S.C. § 1484). Usually, the time, effort, and cost to the importer is somewhat less than in the case of merchandise requiring "formal" entry. Likewise, we understand that the Treasury Department supports an increase in the allowable dollar value for informal entries because it believes that the average cost to Customs of processing an informal entry is less than that for formal entries, and in addition, the paperwork burden on the importing public would be reduced.

The NCBFAA does not object to increasing the § 498(a)(1) limit to $600.00. We think that the $1500 figure proposed in the present bill is excessive. We also believe that the Subcommittee should carefully monitor Customs' ability to develop a workable system to handle the increase in informal entries under the higher ceiling. We also urge that the bill be amended to add the following limitations:

1. Shipments entered through the mails under "informal entry" procedures should be limited to a value of $250. According to knowledgeable NCBFAA member brokers, the use of mail shipments, which are handled outside the usual channels for imported merchandise, significantly increases the chance of error, fraud, etc. In many instances, dutiable merchandise is erroneously released to the addressee without the collection of duties, or with collection of incorrect duties, or even without the package being opened and examined at all.* We fear that an across-the-board dollar-value increase for informal entries, covering all types of merchandise entered via the mails or otherwise, would be an invitation to unscrupulus shippers or consignees to commit wholesale evasion of Customs laws and regulations and widespread fraud on the revenue. The entry documents are prepared by Customs officials assigned to post offices rather than the importer or his agent, as is the case with other importations. Therefore, by increasing the informal value limitation for mail entries, the work load on Customs employees and the cost to the Government will also be substantially increased. Therefore we urge that the present clause in § 498(a)(1), which includes merchandise "imported in the mails or otherwise," be deleted, and replaced with a proviso that retains the present $250 limit for such importations.

2. We also urge that the proposed increase in the value limitation for informal entries be accompanied by language which would preclude the unauthorized practice of Customs brokerage by parties not holding a valid Customs broker's license under § 641 of the Tariff Act (19 U.S.C. § 1641). This problem was addressed by the last Congress in § 201(d) of Public Law 97-446, which amended § 484 of the Tariff Act (pertaining to entry procedures in general) to provide, in substance, that the "importer of record" on the entry documents must be either the owner or the purchaser, or, upon designation by the owner, purchaser or consignee, a licensed Customs broker. As was explained in House Report No. 97-837, 97th Congress, 2nd Session, on § 201 of H.R. 6867 (which ultimately became § 201 of Public Law 97-446):

The remaining parts of this provision deal with the functions of nominal consignees. This clarifying and constricting of responsibilities has grown out of a seeming ambiguity in the existing rulings. A Customs Service ruling stated that courier services may file informal or formal customs entries in their own name and therefore became a nominal consignee eligible to make entries on behalf of others. At the same time, customs law states that informal or formal customs business can be transacted only by a licensed broker. Under the ruling concerning courier services, a concern has arisen that this may so broaden the definition of those who can legally transact customs business that it would be outside that which is desirable.

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* See 1977 Association testimony on H.R. 8149, 95th Congress, 1st Session, before the Subcommittee on Trade of the House Ways & Means Committee (Serial 95-31, pp. 403-405).

Section 201 therefore modifies Section 484 of the Tariff Act of 1930 to provide that required entry documentation can be filed only by the owner or purchaser of merchandise or by a person holding a valid license to conduct such entry business.

The above-mentioned amendment, however, did not affect the introductory language to § 484, which excepts from its operation, inter alia, § 498 of the Tariff Act. To avoid possible circumvention of the prohibition in Public Law 97–446 against unlicensed "nominal" consignees clearing merchandise on behalf of others, via the device of informal entries made under the new higher value limitation, we urge that a conforming amendment be inserted stating as follows:

"In the case of an entry made under the provisions of Section 498(a)(1), the importer of record shall be either the owner or purchaser of the merchandise, or, when appropriately designated by the owner, purchaser, or consignee, a person holding a valid license under Section 641 of the Tariff Act of 1930 (U.S.C. 1641)."

Extending the prohibition against unlicensed parties performing Customs brokerage by preparing and submitting informal entries in their own names on behalf of others, would in no way tend to increase Customs' workload, since (as Customs has on several occasions acknowledged to the Congress) entries prepared and filed by professional, licensed Customs brokers cause far fewer processing difficulties than entries prepared and filed by unlicensed parties. In addition, the proposed amendment would not automatically affect the cost of importing under an informal entry, because an owner or purchaser desiring to prepare and file his informal entry without the use of a broker may still do so.

To be sure, present § 498(a) authorizes the Secretary to include, in his discretion, appropriate § 484 requirements in regulations governing § 498(a) entries. Nevertheless we think that the prohibition should be made mandatory and we therefore urge that the amendment be adopted. Should you deem it appropriate, we would be pleased to meet with representatives of your staff to discuss our comments.

H.R. 5182

To amend the Tariff Schedules of the United States to clarify the duty treatment of certain types of plywood.

No comments were received on this bill.

H.R. 5228

To authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements.

STATEMENT OF JAMES D. WILLIAMS, JR., COUNSEL, AMERICAN CORDAGE & TWINE MANUFACTURERS GROUP

The American Cordage and Twine Manufacturers group (ACTM) is composed of six Regular Members who are manufacturers of twine and cordage products in the United States and one Associate Member who is a supplier to the domestic industry (list attached at A). This statement is submitted on behalf of ACTM in response to press release #41 which requested comments from interested parties in the private sector on various trade and tariff measures. ACTM is unequivocably opposed to the passage of H.R. 5228 which would impose an additional financial hardship on a traditional American industry already beleaguered by low priced and improperly classified imports.

H.R. 5228, if passed as written, would give the President of the United States the authority to remove one year of the staged tariff reductions arrived at on a quid pro quo basis in the Tokyo Round of trade negotiations under the Trade Act of 1974. The practical result of this action would be to remove entirely one year of tariff protection for domestic industry. The year removed would not be the final year (1987, in most cases) when the rates would be lowest and United States industry would have some opportunity to plan for the removal; the year would be removed immediately so that an intermediate step in the staged reductions would be removed and the reductions themselves would end a year early—a double blow. This generalization of the effect only paints part of the picture. For the individual firm, this acceleration would mean that all of its future plans, capital investment projections and marketing strategies would be invalidated. For U.S. cordage manufacturers, it would mean a reduction in duty for cordage of man-made fibers measuring under 3/16 inch in diameter, and of braided construction with and without core. The law on which they were entitled to rely, the negotiated staged tariff rate reductions, would be changed. We urge you not to pull the rug out from under a traditional American industry by passing H.R. 5228. The domestic cordage industry has been using the time of the staged reductions to prepare itself to compete with imported products.

The domestic cordage industry has made great stride in reducing its costs since 1980 when the staged reductions went into effect. Most firms have improved efficiency and productivity to a point where labor costs in this now capital-intensive industry amount to only 15–20% of costs. Overhead has been cut by reducing sharply the amount of inventory held and utilizing streamlined production techniques to maintain an appropriate level of customer service. Resources have been available to accomplish these cost reductions because the tariffs were being reduced gradually at a known rate; business plans could be made and followed.

Not only were costs reduced but capital was also injected into the domestic cordage industry. For example, Fibers South, Inc. of Trussville, Alabama built a new business by putting $3½ million in working capital and equipment into an existing plant between 1982 and the present. The structure of the tariff schedules was carefully considered by the investors in the venture—their business projections relied upon the staged rate reductions for cordage tariffs.

Another example is Bridon Cordage of Albert Lea, Minnesota which spent $2 million on new plant, equipment and technology between 1980 and 1984 Bridon also relied upon the set, negotiated stage rate reductions in its planning and business projections. These long-term capital spending programs cannot be undertaken if realistic plans cannot be made. Investors will not provide capital unless they are provided with realistic sales projections. These projections cannot be drawn up when published tariff schedules are subject to sudden changes.

A sudden removal of one stage of the negotiated reductions would not only force domestic cutbacks but also invite an increased volume of low priced imports.

The continuing goal of the U.S. Cordage industry has been to provide the farming and fishing industries with a reliable supply of high-quality products at reasonable prices. The cost cuts already made have left the high quality of the domestic products intact but there is no place else to cut without reducing product quality. If the duty rate were suddenly and unexpectedly cut, to stay in business U.S. firms would have to cut prices to meet the increased lower priced imports which would move, in even greater volume, into the United States.

Any cut in quality would be at the expense of the farming and fishing industries. In time of national emergency, the United States would have to rely heavily upon its farming and fishing industries. Neither of these basic industries can operate without quality tying products. If the cordage industry is further damaged now, there will be no reliable source for high quality tying products for either of these basic industries or for the many direct defense applications such as camouflage netting, tarpaulin tie-downs and parachute harnesses.

An additional tariff reduction would be an open invitation to increase imports. In recent years, cordage imports under TSUS 316.55 have surged dramatically (chart attached at B). The dollar value has not risen to keep pace with the increase in volume, however. For example between 1981 and 1982 the volume increased by a whopping 264 per cent while the dollar value rose a paltry 29 per cent. The increased imports were obviously low priced. These figures do not tell the whole story. Since 1981 increasing quantities of imported cordage have been misclassified, as described below. Because these imports are recorded in a "basket" category, mixed with many other items, there is no way to determine how much cordage imports have increased.

Due to the strength of the U.S. dollar and current high interest rates, foreign competitors enjoy a 20 per cent advantage over U.S. manufacturers. This per centage represents a far greater advantage then was contemplated when the staged reductions were negotiated. Imports have already received an additional, unanticipated benefit over the negotiated reductions; to make an additional reduction would load another disadvantage on U.S. companies. The current status of the trade deficit (see attached at C) demonstrates the depth of U.S. industry's plight. Imports do not need a further easing of access to the U.S. market.

The U.S. cordage manufactures face severe problems from imports; a sudden tariff reduction would exacerbate these problems.

Low-priced imports are increasing dramatically (see p. 3 supra and attachment B). The U.S. cordage industry has been cutting costs and modernizing to meet this competition (see pp. 2 & 3, supra). One major import problem is the misclassification of some imports of polypropylene cordage as articles not specially provided for of rubber of plastic, TSUS 774.55. Despite the overwhelming tariff classification history that imported cordage should be classified as cordage and an appropriate duty paid, many imports are classified by U.S. Customs as other than cordage in a category to which GSP applies and thus no duty is paid. For example, Columbian Rope Company of Auburn, New York, has its production of polypropylene rope down more than 50 per cent as a direct consequence of the importation of polypropylene cordage which is misclassified into the "basket category".

When a domestic industry faces severe import problems like those enumerated here, an open invitation to increased imports, in the form of a lowered duty would inflame an already dangerous situation in the U.S. market. A alteration in staged-rate reductions would be contrary to U.S. trade policy as established by the Trade Act of 1974

United States industry is entitled to rely on the stability of negotiated tariff reductions, that any agreement reached as a result of the authority of the Trade Act of 1974 would be binding. There has to be, particularly in trade law, a policy of legislative and administrative integrity. In this case, the Congress delegated to the President and the President negotiated the agreements. At that point, American industry was entitled to rely on those negotiations. They have made their plans in accordance with these agreements. H.R. 5228 would represent a breach of faith with U.S. industry. The effect would be that of a negotiated trade cut minus the negotiation. If Congress adopts this legislation, U.S. industry will no longer be able to assume that the law is the law.

AMERICAN CORDAGE AND TWINE MANUFACTURERS GROUP

Regular Members: Blue Mountain Industries, Blue Mountain, AL, Bridon Cordage Inc., Albert Lea, MN; Shuford Mills, Inc., Trussville, AL; Bevis Rope Manufacturing Co., Inc., Rossville, GA; Cavnar Johnson Cordage Co., Inc., Prattville, AL.

Associate Member: E. I. Dupont de Nemours & Company Inc., Wilmington, DE.

Attachment B

U.S. IMPORTS FOR CONSUMPTION OF CORDAGE OF MANMADE FIBERS: 1979-83

[Under 3/16 inch in diameter, current TSUS No. 316.55]

	Quantity (pounds)	Custom values ($1,000)
1979	294,194	1,073
1980	200,338	989
1981	266,928	1,363
1982	785,821	1,753
1983	649,273	1,807

Source: Compiled from official statistics of the U.S. Department of Commerce.

Attachment C

Trade Deficit $19.4 Billion In Quarter

By Jane Seaberry
Washington Post Staff Writer

The U.S. current account trade deficit reached a record $19.4 billion during the first quarter this year, as the balance on merchandise trade continued to deteriorate at a record rate.

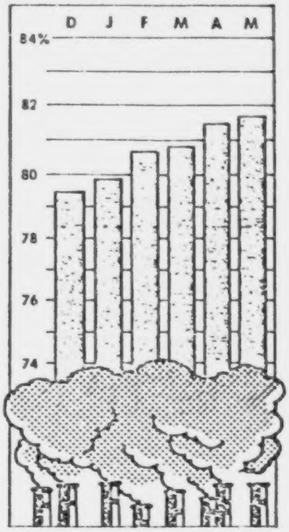
At an annual rate, the nation's current account deficit—trade in goods and services—was $77.6 billion in the first quarter, almost double last year's $41.6 billion deficit, the Commerce Department reported. In the first quarter of 1983, the deficit was $2.9 billion; by the fourth quarter it rose to $17.2 billion, the previous quarterly record.

The current account deficit for 1982 was $9.2 billion, compared with a $6.3 billion surplus in 1981.

In a separate report, the Federal Reserve Board said the nation's factories, mines and utilities operated at 81.7 percent of capacity last month, a slight increase from the 81.5 percent operating rate the previous month. The increase in capacity utilization slowed somewhat from previous months and was still below the 83 to 84 percent rate many economists believe would trigger shortages that could lead to price increases.

The trade report showed that net receipts for services increased $3.1 billion to $8.4 billion in the first quarter. The increase was largely due to a rise in income on U.S. direct investment abroad because of improved economic activity overseas and a shift to small capital gains from large capital losses in the fourth quarter, Commerce said.

MANUFACTURING CAPACITY UTILIZATION



By Kathy Jungjohann for The Washington Post

"While the services surplus should rise this year, the deterioration in the [merchandise] trade deficit, evident in the second quarter, means probable further increases in the current account shortfall," said Commerce Secretary Malcolm Baldrige.

Nonpetroleum imports rose $8.6 billion, which more than offset a small decline in oil imports and a modest increase in exports.

Services and merchandise trade have been hurt by the strong value of the dollar, which makes imports relatively cheaper than U.S. goods and makes exports less price competitive with goods abroad, economists have said. In addition, the U.S. economic recovery has provided

See ECONOMY, D2, Col. 4

Trade Deficit $19.4 Billion In Quarter

ECONOMY, From D1

more jobs and higher incomes for Americans to buy imports, a general occurrence following a recession.

In addition, the recovery in other countries has not picked up enough for foreigners to buy large amounts of U.S.-made goods, economists said.

Income from services is being undermined by higher interest and dividend liabilities held by foreigners, said Sara Johnson, senior economist for Data Resources Inc. The current account deficit must be financed by a net inflow of capital, which generates interest and dividend income for foreigners.

In addition, the Latin American debt problem reduced foreign earnings of U.S. banks and "that's beginning to show up" on the country's balance sheet, Johnson said.

During the first quarter, the merchandise trade deficit rose to $25.6 billion, the fourth consecutive record quarterly deficit. It was $19.4 billion during the fourth quarter last year.

Imports rose $8.6 billion to $79.8 billion "across a broad range of nonpetroleum imports." Exports increased $2.3 billion to $54.2 billion, "primarily due to strong automotive exports to Canada and moderate increases in capital goods and agricultural commodities," Commerce said.

During the quarter, the dollar appreciated 3 percent on a trade-weighted average basis against currencies of 22 countries of the Organization for Economic Cooperation and Development and rose 1 percent against currencies of 10 select industrial countries, the Commerce Department said.

The Washington Post
June 19, 1984
p. D1 & D2

Williams & Thorman,
Washington, DC, June 21, 1984.

John J. Salmon,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: This letter serves to register the opposition of the American Netting Manufacturers Organization (ANMO) to H.R. 5228. By press release #41 dated June 12, 1984, comments were requested by the Trade Subcommittee on this and other tariff and trade bills.

ANMO represents the domestic fish netting industry. Its members (see attached list) from various locations throughout the United States stand together in their unequivocal opposition to H.R. 5228. ANMO fully supports the position set out in the submission of the American Cordage and Twine Manufacturers group (ACTM) submitted to the Trade Subcommittee on June 21, 1984. As a small, viable industry besieged by low-priced imports, (in 1983 imports accounted for 30% of U.S. consumption) ANMO feels that the open invitation to additional imports which would result from the passage of H.R. 5228 is an additional burden the United States Congress should not ask struggling domestic industries to bear.

Passage of H.R. 5228 would amount to a breach of faith with U.S. industry. Domestic industry has relied on the staged rate reductions negotiated under the authority of the Trade Act of 1974 to plan its modernization and capital expenditures. ANMO urges you to reject the proposed bill, H.R. 5228.

Sincerely,

Ann Ottoson King,
Counsel, American Netting Manufacturers Organization.

American Netting Manufacturers Organization Members

Bayside Net and Twine Company, Inc., Brownsville, TX.
Blue Mountain Industries, Blue Mountain, AL.
Carron Net Company, Inc., Two Rivers, WI.
Hagin Frith & Sons Company, Willow Grove, PA.
Mid Lakes Manufacturing Co., Knoxville, TN.
Nylon Net Company, Memphis, TN.
Northwest Net & Twines, Inc., Everson, WA.

Blue Mountain Industries,
Blue Mountain AL, June 20, 1984.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Salmon: Blue Mountain Industries manufactures cordage products, employing approximately 650 people in Anniston, Alabama, and we are opposed to HR-5228 authorizing the acceleration of staged duty rate reductions affecting TSUS-316.55

The enactment of HR-5228 would further reduce our sales of cordage products which has declined and is continuing to decline because of lower-quality and lower-priced imports. Because of the high influx of imported cordage products, the U.S. market share is rapidly declining. The total cordage market over the past 200 years has become considerably smaller because of the transition from natural fibers to synthetic fibers which have a longer life and a higher strength-to-weight ratio.

The cordage industry also has a 516 petition pending before customs involving a misclassification of cordage products. This misclassification, in addition to all of the above, has the cordage industry at the point that it may not survive.

We need some relief against imports, not further reductions or accelerations in current duty rates, which only make it more difficult for a viable cordage industry to survive.

We appreciate this opportunity to submit our statement opposing HR-5228.

Sincerely,

H. D. Whitlow, *Vice President.*

Statement of the Cordage Institute

This statement is submitted in opposition to H.R. 5228, a bill to authorize the acceleration of staged rate reductions proclaimed to carry out trade agreements. The

Cordage Institute and its members feel that passage of this measure will further damage an industry that has already been severely affected by cordage imports that have entered this country at reduced tariff rates or duty free.

The Cordage Institute is a trade association of manufacturers of natural and man-made fiber cordage products. Since its founding in 1920, the Cordage Institute has been a collective voice of this important industry. It has a history of service to the country and to customers, distributors and manufacturers of cordage made from natural and man-made fibers. This Institute has 12 regular members and 3 special and associate members located in 12 states. The members of the Cordage Institute manufacture all sizes and types of cordage products from twine used to wrap small size packages to large hawsers used to tie up the nation's ships of war. For the most part the members of the Cordage Institute are small businesses struggling to survive in a highly competitive and recessionary economy. the cordage industry has been resilient and flexible and has been able to meet the challenges of a volatile economy.

The 3,500 workers in the cordage industry today are highly productive. The U.S. Department of Commerce Census of Manufacturers has shown that the value added per employee in the U.S. cordage industry nearly doubled between 1967 and 1977. In terms of value added per production worker hour, the increase in productivity was over 120 percent during that same period. The strong positive finding in this area helps to explain the domestic cordage industry's record of declining real prices and international competitiveness during the highly inflationary 1970's. Even in the fact of increasing imports, the domestic cordage industry has been able to demonstrate it's commitment to remain competitive internationally.

The cordage, industry in the United States has undergone substantial structural changes in the past three decades. These changes have involved the virtual abandonment to imports of the hard-fiber twine market which once had been a mainstay of the industry. Accompanying this change was a sharp decline in production by the U.S. cordage industry in the years following World War II, resulting in considerable overcapacity and, ultimately, consolidation among the cordage companies remaining in operation. A second fundamental change involved a major shift in market preferences from traditional, hard fiber cordage to synthetics derived from petrochemicals.

The shift to synthetic rope was caused by several factors. Polypropylene rope weighs about half as much as equivalent lengths of manila ropes, is buoyant, has greater strength and durability, and will not decay, freeze or absorb water like vegetable fiber rope. For these reasons it is distinctly preferred for most heavy marine uses as well as for specialized purposes such as ski two ropes, construction and utility cables, fishing line, lariat rope, mountain climbing, oceangraphic and other special purpose rope. In addition, polypropylene cores are used in making wire rope and cable for use on oil tankers, in heavy construction, and in particular applications such as elevator cable.

It is clear, that a separate structure now exists for the production and marketing of synthetic cordage, as opposed to traditional, hard-fiber cordage. While this development has been unfolding over the past 25 years, the structure of the industry itself has changed, so that marginally efficient producers have been forced out of the market by specialized new entrants; those full-line rope manufacturers remaining in operation are primarily firms that have succeeded in consolidating productive facilities to maximize productivity and have established and preserved efficient distribution networks.

The structural changes in the U.S. cordage industry—that is, a new set of market dynamics introduced by the relatively rapid movement to synthetic cordage—have resulted in vigorously competitive markets in the United Sates for all cordage producers, both domestic and foreign, especially since import barriers have been relatively modest for most cordage products.

The competitiveness of U.S. synthetic cordage markets in recent years, and the efficiency of firms remaining in the industry, is reflected in a pattern of domestic price increases that is remarkably modest in comparison with the highly inflationary price trends recorded for most industrial commodities during the 1970's (and in particular for commodities such as synthetic cordage products, which are susceptible to the effects of massive petroleum price increases on feedstock prices.)

Calculation of average unit values for individual compositions of synthetic cordage is possible only for the years following 1973, during which prices for nylon rope increasd by an average of 6.5 percent annually and for polyester rope by 6.1 percent annually. Remarkably, for the principal category of synthetic rope composed of polyethylene/polypropylene (olefins), average price increases were only 3.2 percent annually. Further, if these nominal prices are correct for inflation, the resulting prices in real terms show a substantial decline during a period when factor input prices (raw materials, machinery, labor, capital etc.) were rising sharply.

As has been demonstrated here, the domestic cordage industry is efficient and competitive. The U.S. consumers of synthetic cordage can be assured of a long-term supply of domestic and imported cordage at competitive prices so long as the corrosive effects of market disruption by particular imports from particular sources are avoided.

Imports have figured prominently in U.S. cordage markets for may years. Currently almost all hard-fiber rope sold by U.S. cordage companies is manufactured abroad, and the domestic plant capacity employed in the production of 55.5 million pounds of hard-fiber rope in 1965 is now idle. As noted above, the excess capacity in production machinery for both twine and rope made from natural fibers constitutes a substantial "overhang" for the remaining full-line cordage producers in the United States, hindering their ability to respond to competition from domestic and foreign firms that recently have begun production of synthetic cordage.

While duties on synthetic stranded rope will be unchanged, if passage of H.R. 5228 does occur, there will be substantial reductions in the average (duty-paid) prices of other synthetic cordage imports.* In markets as price sensitive as those for many cordage products changes of this magnitude could have far-reaching consequences despite the demonstrated competitiveness of the domestic industry. Acceleration of this staged duty rate reduction will only exacerbate an already critical situation for the domestic cordage industry.

In summary, we implore the Subcommittee to reject H.R. 5228 and to instead keep the regular order of duty rates as established during the "Tokyo Round" of the Mutilateral Trade Negotiations (MTN).

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*See Attachment A.

Attachment A

SCHEDULED DUTY RATE REDUCTIONS FOR U.S. IMPORTS OF SYNTHETIC CORDAGE
(1981 - 1987)

TSUS No.	Description	1981	1982	1983	*1984	1985	1986	1987
316.5500	Synthetic cordage, stranded, under 3/16" dia. (twine)	12.5¢/lb. +15%	10¢/lb. +13.8	8¢/lb. +12.7%	6¢/lb. +11.5%	4¢/lb. +10.3%	2¢/lb. +9.2%	8%
316.5800	Synthetic cordage, stranded, 3/16" dia. and over (rope)	12.5¢/lb. +15%	12.5¢/lb. +15%	12.5¢/lb. +15%	12.5¢/lb. +15%	12.5¢/lb. +15%	12.5¢/lb. +15%	12.5¢/lb. +15%
348.00	Synthetic cordage of braided construction, w/core, all sizes	15%	13.7%	12.4%	11.1%	9.8%	8.5%	7.2%
348.05	Synthetic cordage of braided construction, w/o core, all sizes	21%	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%

Source: Office of the U.S. Trade Representative

*current duty rate in effect

SHUFORD MILLS, INC.,
Hickory, NC, June 20, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: Shuford Mills, Inc. is a domestic manufacturer of a number of textile related items. We have been in business since 1880 and employ over 2,200 people. Among the items we manufacture is polypropylene twine, which would be adversely affected by passage of H.R. 5228. This bill, sponsored by Gibbons, Conable, Vander Jagt, and Frenzel, would accelerate the negotiated reduction on cordage (TSUS 316.55) duties. We are stongly opposed to passage of this legislation.

Very truly yours,

TOM GUTHRIE,
Vice President and General Manager,
Special Products Division.

H.R. 5418

To amend section 641 of the Tariff Act of 1930, and for other purposes.

No comments were received on this bill.

H.R. 5455

To amend the Tariff Schedules of the United States to clarify the classification of unfinished gasoline.

No comments were received on this bill.

H.R. 5625

Requiring the Commissioner of Customs to establish a customs district known as the Columbia-Snake Customs District.

STATE OF IDAHO,
Boise, ID, May 4, 1984.

Hon. RON WYDEN,
U.S. Representative, Longworth Building,
Washington, DC.

DEAR REPRESENTATIVE WYDEN: It is with real pleasure that, on behalf of the Idaho District Export Council, I submit this letter of support for your legislative proposal to establish a Columbia-Snake River Customs District. Idaho has long been interested in strengthening its international trade efforts and developing a support system along the Columbia and Snake Rivers that would enable the Port of Lewiston to fully develop its potential to serve Northern Idaho and the region.

Idaho is also very interested in establishing a Port of Entry for Boise, Idaho. Boise is the home of several major international corporations, and Port of Entry is extremely important to the further development of the state's economic trade future. At its meeting on April 26, 1984, the District Export Council of Idaho formally and unanimously adopted a Resolution supporting the Bill.

The Council commends you on your proposal and looks forward to working with you and the Idaho Congressional Delegation in furthering trade opportunities for the region.

Sincerely,

DAVID H. LEROY,
Idaho Lieutenant Governor,
Chairman, Idaho District Export Council.

H.R. 5751

To extend for 2 additional years the suspension of duty on uncompounded allyl resins.

No comments were received on this bill.

H.R. 5783

To suspend for a 3-year period the duty on certain metal umbrella frames.

COLLIER, SHANNON, RILL & SCOTT,
Washington, DC, June 20, 1984.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: On behalf of our clients Almet/Lawnlite, California Umbrellda, Finkel Outdoor Products Co. and Keller Industries, we submit the following comments on H.R. 5783, a bill to temporarily suspend the normal customs duties on certain metal umbrella frmas.

Almet/Lawnlite, Californian Umbrella, Finkel and Keller are U.S. manufacturers of outdoor patio and beach umbrellas. The addresses of these companies are as follows: Almet-lawnlite, Protland, Tennessee 37148, California Umbrella, 1325 East Franklin Avenue, Pomona, California 91766, Finkel Outdoor Products Co., 16 East 34th Street, New York, New York 10016, Keller Industries, 18000 State Road 9, Miami, Florida 33162.

In addition to patio and/or beach umbrellas, certain of these companies also manufacture various kinds of lawn furniture.

These companies' interest in Rep. Kaptur's bill stems from the fact that the Tariff Schedules of the United States ("TSUS") currently classify all umbrellas, whether hand-held umbrellas chiefly used for protection against rain or patio or beach umbrellas, under a single five-digit TSUS number (751.05). Similarly, parts for umbrellas, including metal umbrella frames and skeletons, are also currently classified under a single five-digit TSUS number (751.20), whether they are used in hand-held rain umbrellas or patio and beach umbrellas.

Over the past several years, U.S. manufacturers of patio and beach umbrellas have become increasingly concerned about rapidly growing imports of patio and beach umbrellas and frames manufactured in Taiwan. After imports of complete umbrellas from Taiwan under TSUS item 751.05 were disqualified from preferential duty treatment under the Generalized System of Preferences after exceeding the competitive need limit, Taiwanese producers began to increase their U.S. shipments of metal frames and skeletons for such umbrellas. In 1983, imports from Taiwan under TSUS item 751.20 exceeded the competitive need limit as well as the GSP's de minimis dollar threshold for the first time. The patio and beach umbrella industry was very pleased that, as a result, Taiwan lost eligibility for duty-free treatment for imports of patio and beach umbrella frames and skeletons. Imports of these products from Taiwan are now subject to the regular 15 percent duty.

As we understand it, certain domestic manufacturers of handheld rain umbrellas were not as pleased with this development, inasmuch as they apparently find it necessary to import metal frames and skeletons for these umbrellas from Taiwan for further assembly into completed rain umbrellas. It was apparently out of a desire to rescind the reimposition of the normal duty rate for imports from Taiwan of frames and skeletons for hand-held rain umbrellas that Rep. Kaptur initially proposed her legislation.

As originally structured, Rep. Kaptur's bill (H.R. 5710) would have achieved this purpose by replacing current TSUS item 751.20 with two new TSUS items, the first a duty-free category applying to all metal umbrella frames, and the second and "other" category carrying the normal 15 percent duty. Our clients strongly opposed this proposal for the obvious reason that it would have accorded duty-free treatment to imports of metal patio and beach umbrella frames as well as imports of metal hand-held rain umbrella frames. Our more general concern, however, was that any legislation which would make rain umbrella frames and patio and beach umbrella frames the subject of two separate five-digit TSUS numbers would virtually assure that imports of patio and beach umbrella frames from Taiwan would eventually requalify for GSP treatment because of the likely failure of this limited dollar volume of trade to exceed the GSP program's de minimis dollar threshold under the competitive need formula. Thus, as originally proposed, Rep. Kaptur's legislation would have assured, either directly or indirectly, that imports of patio and beach umbrella frames would requalify for duty-free treatment, despite the fact that Taiwan acounts for the vast majoirty of U.S. imports of this merchandise. For obvious reasons, our clients strongly opposed any change that would allow Taiwan to requilify under the GSP program.

The revised version of Rep. Kaptur's bill would, we believe, effectively avoid this unwarranted result. H.R. 5783 would grant duty-free treatment to metal frames for hand-held rain umbrellas on only a temporary basis by merely inserting in the appendix to the TSUS a temporary TSUS number applicable to "frames for hand-held umbrellas chiefly used for protection against rain (provided for in item 751.20, part 8B, schedule 7)." We are satisfied that this change should have no adverse effect on the current duty structure applicable to frames for patio and beach umbrellas. Imports of frames for hand-held umbrellas will continue to be counted for statisitical purposes under 751.20 (along with frames for patio and beach umbrellas), assuring that the total volume of trade in that five-digit TSUS item will not be diminished for purposes of the de minimis dollar threshold under the GSP program. So long as this is done, Almet/Lawnlite, California Unbrella, Finkel and Keller have no objection to the legislation.

Thank you for your attention to these comments.

Sincerely,

David A. Hartquist.
Michael R. Kershow.

Haas-Jordan Co.,
Toledo, OH, June 19, 1984.

Hon. Sam Gibbons,
Chairman, Subcommittee on Trade, U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for allowing me to submit testimony in support of H.R. 5783. Passage of this bill is of utmost importance for my company.

I would like to express my sincere thanks on behalf of the Haas-Jordan Company and all of our associates for the work and effort that you and Congresswoman Marcy Kaptur have put forth on our behalf. We are most appreciative for Marcy Kaptur's time and attention in sponsoring this legislation, and for your crucial assistance. While elimination of the 15 percent duty on umbrella frames for hand-held rain umbrellas would be most desirable, a three year or one year suspension of the duty on this specific category of umbrella frames, at least is a step in the right direction.

It is an unusual course of events when a duty at the same time is both helping and hindering different sectors of the U.S. umbrella industry. We fully appreciate an understand the desire of patio and beach umbrella frame makers to maintain their 15 percent duty. At the same time, however, manufacturers of umbrellas that are used for rain protection or are hand-carried umbrellas are hurt by protective duties. The reason that our business is hurt is because there is no longer a domestic frame industry manufacturing umbrella frames or components for hand-held rain umbrellas. The best quality and most competitively priced frames that are available to the domestic umbrella manufacturers come from Taiwan. Up until April 1st of this year these frame components were able to enter the United States free of duty. Since Taiwan now has more than 50 percent of this total combined market any frame components coming in from Taiwan are not subject to 15 percent duties.

This means that domestic umbrella manufacturers using frames from Taiwan are now facing a higher cost on their component materials or the choice of buying frames from other foreign countries in which case the price is either higher than from Taiwan, or the quality of the frame is significantly less. In either event, domestic manufacturers that heretofore have been using frames manufactured in Taiwan are left in the unenviable position of being subject to a tariff duty that is protective in nature while there is no domestic industry to protect.

Thank you again for your efforts on our behalf to date. We hope that you and Congresswomen Marcy Kaptur will be successful in finding a solution to our dilemma. If I can be of any further help or assistance, or should you have additional questions please do not hesitate to call.

Yours very truly,

David F. Waltz, *President.*

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